



City of Biggs

Agenda Item Staff Report for the next regular City Council Meeting: February 27, 2012 6:00PM

DATE: February 22, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Pete Carr, City Administrator

SUBJECT: Public Benefits Database Project (Action)

Staff requests Council approve share of costs for participation in a new project to provide database systems for the Public Benefits program.

Background:

Biggs is one of seven NCPA members – generally the smaller NCPA agencies -- whose staff has indicated interest in participation in a new project to provide a comprehensive database with reporting templates for energy efficiency programs for each participating member. Based on an RFP issued last summer, a consultant has been selected by NCPA to create and implement this project. NCPA now seeks member commitments to fund the project.

The cost to Biggs is a small fraction of the overall \$438,000 project, spread out over six years – one implementation year and five “licensing access” years. The result is expected to be a service that increases Biggs’ access to data and templates for energy efficiency measures, rebate calculations, and State regulatory reporting requirements. This service is expected to provide qualitative improvement for our local program as well as approximately \$4000/year in administrative cost reductions.

Our total cost of \$12,302 represents \$2175 in first-year start-up expense, followed by five years participation at \$2025 per year. Much of the \$12,302 cost is already imbedded in NCPA Commission-approved budgets for this fiscal year. A portion of the cost is to offset NCPA’s agency cost and place the cost burden more squarely on the responsibility of those members who are participating. Hence, the cost to Biggs above the already imbedded costs come to \$4480.70, spread over the six years. All expenses of the project can be paid by the Public Benefits Fund, fund 051.

Attachment: [provided electronically]:
Member Services Agreement and Consulting Services Agreement for this project.

Recommendation:

Approve energy efficiency database project participation at \$2175 this fiscal year, expensed to Fund 051.

Fiscal Impact:

\$2175 this fiscal year

\$2200 in each of the following five fiscal years

**CONSULTING SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
crmORBIT, INC. FOR ENERGY EFFICIENCY DATABASE PROGRAM SERVICES,
INCLUDING LICENSE AND MAINTENANCE SERVICES**

This agreement for consulting services ("Agreement") is made by and between the NORTHERN CALIFORNIA POWER AGENCY, a public joint powers agency with offices located at 651 Commerce Drive, Roseville, CA, 95678-6420 ("Agency") and crmOrbit a California Corporation with offices located at 2693 Blucher Valley Road, Sebastopol, CA 94572 ("Consultant") (together sometimes referred to as the "Parties") as of _____, 2012, (the "Effective Date") in Roseville, California.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to Agency the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In addition, Consultant shall provide to Agency the software licensing and maintenance and support services specified in the licensing Master Agreement and Terms of Use attached as Exhibit A-1. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A or A-1, this Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2017, when Consultant completes the work described in Exhibit A and A-1, unless the term of the Agreement is otherwise terminated or modified, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the Agency's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a professional manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from Agency of such desire of Agency, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.

- 1.5 **Contracting Members and Member Services Agreement.** Consultant acknowledges that Agency is undertaking this Agreement on behalf of certain of its members, the cities of Alameda, Biggs, Healdsburg, Lodi, and Lompoc; the Plumas-Sierra Rural Electric Cooperative; and the Truckee Donner Public Utility District (jointly the "Contracting Members"), pursuant to an agreement between the Contracting Members and the Agency (the "Member Services Agreement"). Pursuant to the Member Services Agreement, which Consultant has reviewed, and this Agreement, Consultant will be responsible for directly interfacing with representatives of the Contracting Members in addition to those of the Agency.

The Contracting Members are express third party beneficiaries of this Agreement, and are permitted Users of the software licenses granted hereby consistent with the terms of this Agreement.

Section 2. COMPENSATION. Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED FOUR HUNDRED THIRTY-EIGHT THOUSAND EIGHT HUNDRED SEVENTY-ONE DOLLARS AND SIXTY-THREE CENTS (\$438,871.63)** for or all work set forth in Exhibit A and Exhibit A-1, pursuant to the Consultant's fee schedule which is attached hereto and incorporated as Exhibit B and all reimbursable expenses incurred in performing the work. In the event of a conflict between this Agreement and Consultant's proposal regarding the amount of compensation, this Agreement shall prevail. Agency shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from Agency to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to Agency in the manner specified herein. Except as specifically authorized by Agency, Consultant shall not bill Agency for duplicate services performed by more than one person.

Consultant and Agency acknowledge and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subConsultants of Consultant. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subConsultants may be eligible. Agency therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task or Deliverable Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion of each Deliverable identified in the Scope of Work;

- At Agency's option, for each work item in each Deliverable, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The Consultant's signature.

Invoices shall be sent to:

Northern California Power Agency
651 Commerce Drive
Roseville, California 95678
Attn: Accounts Payable

- 2.2 **Monthly Payment.** Agency shall make payments according to the schedule outlined in Table 1 of Exhibit B, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.
- 2.3 **Final Payment.** Agency shall make the final payment listed in Table 1 of Exhibit B (30) days after submittal to Agency of a final invoice, if all services required have been satisfactorily performed.
- 2.4 **Total Payment.** Agency shall pay for the services to be rendered by Consultant pursuant to this Agreement. Agency shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. Agency shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.5 **Fees.** Fees for work performed by Consultant shall not exceed the amounts shown on the following fee schedule attached hereto as Exhibit B.
- 2.6 **Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B. Expenses not listed in Exhibit B are not chargeable to Agency. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

- 2.8 **Payment upon Termination.** In the event that the Agency or Consultant terminates this Agreement, the Agency shall compensate the Consultant as provided in Section 9 of Exhibit A-1.
- 2.9 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance listed below for the period covered by the agreement.

- 4.1 **Workers' Compensation.** If Consultant employs any person, Consultant shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident.
- 4.2 **Commercial General and Automobile Liability Insurance.**
- 4.2.1 **Commercial General Insurance.** Consultant shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action for bodily injury, death, personal injury and property damage which may arise out of the operations of the consultant. The policy shall provide a minimum limit of \$1,000,000 per occurrence/\$2,000,000 aggregate.
- 4.2.2 **Automobile Liability.** Consultant shall maintain automobile liability insurance for the term of this Agreement covering any loss of liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Consultant, on or off Agency premises. The policy shall provide a minimum limit of \$1,000,000 per each accident. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.
- 4.2.3 **General Liability/Umbrella Insurance.** The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.
- 4.3 **Professional Liability Insurance.** None required.

4.4 All Policies Requirements.

4.4.1 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall, at the sole option of the Agency, provide Agency with (1) a Certification of Insurance that demonstrates compliance with all applicable insurance provisions contained herein; (2) policy endorsements to the general liability policy adding the Northern California Power Agency as an Additional Insured and declaring such insurance primary in regard to work performed pursuant to this Agreement; or (3) upon request by the Agency, complete copies of all policies and/or complete copies of all endorsements that demonstrate compliance with this Section 4.

4.4.2 Notice of Reduction in or Cancellation of Coverage. An endorsement must be attached to all insurance obtained in accordance with this Agreement stating that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Agency. Consultant shall also provide thirty (30) days' prior notice to the Agency by certified mail of any impending reduction in the limits or coverage of any insurance policies that form a part of this agreement.

4.5 Waiver of Subrogation. Consultant agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Consultant, its employees, agents and subConsultants.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

5.1 Consultant shall to the fullest extent allowed by law, with respect to all services performed in connection with this Agreement, indemnify, defend and hold harmless the Agency and its officials, commissioners, officers, employees, agents and volunteers, including the Contracting Members and their officials, officers, employees, agents, and volunteers, from and against any and all claims that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the Consultant. Consultant will bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly ("Liabilities"). Such obligations to defend, hold harmless and indemnify the Agency and Contracting Members shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the Agency or the Contracting Members. The duty to defend and indemnify expressly extends to any claim of infringement upon copyright or patent relating to the software provided pursuant to this Agreement.

The duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Agency of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subConsultant of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of Agency, Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subConsultants, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Consultant.** At all times during the term of this Agreement, Consultant shall be an independent Consultant and shall not be an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise Agency shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subConsultants providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Consultant Not Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.

- 7.2 **Compliance with Applicable Laws.** Consultant and any subConsultants shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subConsultants shall comply with all applicable rules and regulations to which Agency is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and any subConsultants have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to Agency that Consultant and its employees, agents, any subConsultants shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subConsultants shall obtain and maintain during the term of this Agreement valid Business Licenses from Agency. Consultant represents and warrants to Agency that Consultant has the right to license all the software being provided to Agency pursuant to this Agreement.
- 7.5 **Nondiscrimination and Equal Opportunity.** In compliance with federal, state and local laws, Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subConsultant, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION

- 8.1 **Termination** (Reserved) .
- 8.2 **Modification.** The Parties may, by mutual written agreement, extend or shorten the end date of this Agreement beyond that provided for in Subsection 1.1. Any such modification to this Agreement, including an adjustment of compensation or reimbursement of costs beyond the amount specified in Section 2 herein, shall be specified in a signed amendment or exhibit to the Agreement.

In the event that one or more, but less than all, of the Contracting Members terminates the Member Services Agreement, and such termination reduces funding available to the Agency for this Agreement, the Parties agree to meet and confer in good faith with respect to modification of the scope of work and price to accommodate such withdrawal.

- 8.3 **Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.4 **Assignment and Subcontracting.** Agency and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique professional competence, experience, and specialized professional knowledge. Moreover, a substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Agency. Notwithstanding the foregoing either party may assign this Agreement without consent of the other party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets which does not involve a direct competitor of the other party. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subConsultants noted in the proposal, without prior written approval of the Agency. Where written approval is granted by the Agency, Consultant shall supervise all work subcontracted by Consultant in performing the services; shall be responsible for all work performed by a subConsultant as if Consultant itself had performed such work; the subcontracting of any work to subConsultants shall not relieve Consultant from any of its obligations under this Agreement with respect to the services; and Consultant is obligated to ensure that any and all subConsultants performing any services shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, and such breach is not cured within 45 days of written notice, Agency's remedies shall include, but not be limited to, the following:
- 8.6.1 Terminate the Agreement;
 - 8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

- 8.6.3 Consultant to provide an export of data entered into the energyOrbit platform to Agency at Consultant's expense;
- 8.6.4 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
- 8.6.4 Obtain a refund of any pre-paid amounts for services applicable since the date of breach.
- 8.6.5 Total financial remedies for breach by Consultant shall not exceed the amounts actually paid to Consultant for the project to date, provided however, that such limitation shall not apply to claims related to either violation of copyright or negligent disclosure of personally identifying customer information.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** Subject to the terms of the licensing agreement entered into concurrently herewith by the Parties (the "Master Use Agreement") all reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Consultant hereby agrees to deliver those documents to the Agency upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the Agency and are not necessarily suitable for any future or other use. Agency and Consultant agree that, until final approval by Agency, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.

Consultant agrees that the authorized representatives of the Contracting Members shall be entitled to recognition as Users under the Master Agreement.

- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection,

audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.

- 9.4 **Confidential Information and Disclosure.** During the term of this Agreement, either party or the Contracting Members (the "Disclosing Party") may disclose confidential, proprietary or trade secret information (the "Information"), to the other party (the "Receiving Party"). All such Information made available in a tangible medium of expression (such as, without limitation, on paper or by means of magnetic tapes, magnetic disks or other computer media) shall be marked in a prominent location to indicate that it is the confidential, proprietary and trade secret information of the Disclosing Party at the time of disclosure to the Receiving Party. The Receiving Party shall hold the Disclosing Party's Information in confidence and shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Information. The Receiving Party shall not attempt to reverse engineer or in any manner create any product or information which is similar in appearance to or based on the Information provided by the Disclosing Party. The Receiving Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, Consultants and subConsultants who have a need to know in connection with this Agreement.

The Receiving Party's confidentiality obligations hereunder shall not apply to any portion of the Disclosing Party's Information which:

- (a) Has become a matter of public knowledge other than through an act or omission of the Receiving Party;
- (b) Has been made known to the Receiving Party by a third party in accordance with such third party's legal rights without any restriction on disclosure;
- (c) Was in the possession of the Receiving Party prior to the disclosure of such Information by the Disclosing Party and was not acquired directly or indirectly from the other party or any person or entity in a relationship of trust and confidence with the other party with respect to such Information;
- (d) The Receiving Party is required by law to disclose; or
- (e) Has been independently developed by the Receiving Party from information not defined as "Information" in this Agreement, as evidenced by Receiving Party's written records.

The Receiving Party shall return or destroy the Disclosing Party's Information (including all copies thereof) to the Disclosing Party promptly upon the earliest of any termination of this Agreement or the Disclosing Party's written request. Notwithstanding the

foregoing, the Receiving Party may retain one copy of such Information solely for archival purposes, subject to the confidentiality provisions of this Agreement. Consultant understands that NCPA is a public agency and is subject to the laws that may compel it to disclose information about Consultant's business.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California. Enforcement of this Agreement is subject to alternative dispute resolution provisions in Section 10.13 of the Agreement and arbitration provisions in Section 15 of Exhibit A-1.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 **Use of Recycled Products.** Consultant shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the Agency. If Consultant was an employee, agent, appointee, or official of the Agency in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the Agency for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Jane Cirrincione, Assistant General Manager of Legislative & Regulatory Affairs her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.
- 10.10 **Notices.** Any written notice to Consultant shall be sent to:

Seth Golub
Vice President Professional Services
2693 Blucher Valley Road
Sebastopol, CA 95472

Any written notice to Agency shall be sent to:

James H. Pope
General Manager
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

With a copy to:

Michael F. Dean
General Counsel
Northern California Power Agency
Meyers Nave
555 Capitol Mall, Suite 1200
Sacramento, CA 95814

- 10.11 **Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 **Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein. In the event of any conflict between the provisions of any exhibit and this Agreement, the provisions of this Agreement shall govern.
- 10.13 **Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Consultant agree to resolve the dispute in accordance with the following:
- 10.13.1 Each party shall designate a senior management or executive level representative to negotiate any dispute;
- 10.13.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 10.13.3 If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 10.13.4 The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 10.13.5 The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 10.13.6 The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code § 900, *et. seq.*
- 10.14 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the date signed by the Agency.

NORTHERN CALIFORNIA POWER AGENCY

crmOrbit, Inc.

Date _____

Date _____

JAMES H. POPE, General Manager

SETH GOLUB, Vice President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

General Counsel

EXHIBIT A SCOPE OF SERVICES

1. Background

This consultant services agreement ("CSA") between NCPA and crmOrbit ("Consultant") includes a licensing and maintenance agreement ("Master Agreement") between the same two parties attached as Exhibit A-1. NCPA is also concurrently entering into a Member Services Agreement on behalf of seven (7) of its member agencies who will receive the energy efficiency database services provided by Consultant ("Contracting Members") and who will be permitted Users under the terms of the license.

This Exhibit A consists of this general description of the Scope of Services, NCPA's Request for Proposals for Demand Side Management Database dated July 25, 2011 ("RFP"), and Consultant's Response to Request for Proposals ("Response") both of which are incorporated herein by this reference (but are not attached) as well as the Master Agreement in Exhibit A-1. Each of the documents shall be read as a part of a whole, integrated Scope of Services. However, in the event of any conflict, this Exhibit shall govern over the Master Agreement, the RFP and Response, and the Response shall govern over the RFP.

2. Scope of Work in General

During initial implementation, Consultant will configure up to twenty (20) energy efficiency incentive programs, some of which will be shared by the Contracting Members as specified below, and configure up to five (5) different business/workflow processes to be shared by the Contracting Members.

Of the initial set of twenty (20) energy efficiency incentive programs, six (6) will be template (generic) programs to be shared by the Contracting Members and the remaining fourteen (14) will be utility-specific programs with two (2) for each of the seven (7) Contracting Members (City of Alameda, City of Biggs, City of Healdsburg, City of Lodi, City of Lompoc, Plumas-Sierra REC, and Truckee Donner PUD).

Consultant will train Contracting Member Authorized Representatives to configure additional programs and create templates for program types that can be accessed by all authorized users to allow for rapid deployment of new programs with similar workflows.

Consultant will license all programs and processes to NCPA under the terms of the Master Agreement. Each Contracting Member's Authorized Representative, or other designated staff of the Contracting Member, shall be a "User" under the terms of the Master Agreement entitled to utilize the programs and databases provided.

3. The following provides a general list of deliverables to be provided:

Deliverable 1: Develop Project Plan

Consultant shall conduct an initial planning meeting with the NCPA Project Manager and representatives of the Contracting Members. During this session, Consultant will fill in a communications plan identifying key stakeholders, concerns, and communications approach. Consultant shall provide an updated midlevel

project plan based upon the example provided in the RFP response document. The project plan shall incorporate reasonable key payment milestones and deliverable dates for each of the remaining thirteen (13) deliverables as mutually agreed upon by NCPA and Consultant.

Deliverable 1 due date: This deliverable will be submitted for approval to NCPA not later than four (4) weeks from the Effective Date.

Deliverable 2: Develop Energy Efficiency Measures

Consultant will work with NCPA Project Manager and Contracting Member representatives to develop a variety of prescriptive energy efficiency measures, which permit the measurement or calculation of the amount of energy being saved. NCPA shall prepare measures and deemed savings/incentive parameters in a spreadsheet template provided by Consultant.

If needed, Consultant will also configure up to five (5) formula-based prescriptive measure types, in which users provide additional choices/inputs to generate calculated savings, and train NCPA's Project Manager to set up additional such measures as may be needed in the future. Consultant will also set up additional such measures as requested by NCPA on a time and materials basis.

Deliverable 3: Set Up General Program Parameters

Consultant shall work with NCPA Project Manager and Contracting Member Authorized Representatives to set up general program parameters for the initial Contracting Member energy efficiency incentive programs that will be deployed.

Deliverable 4: Develop Program & Measure Requirements

Consultant shall work with NCPA Project Manager and Contracting Member Authorized Representatives to enter program-level and measure-level requirements and develop survey questions to support the energy efficiency incentive programs of the Contracting Members.

Deliverable 5: Create Reports and Dashboards

Consultant will work with NCPA Project Manager and Contracting Member Authorized Representatives to create up to ten (10) reports and ten (10) dashboards for the Contracting Members' energy efficiency incentive programs. Consultant will create five (5) initial reports and five (5) initial dashboards, to be shared by the Contracting Members. Following completion of the initial reports and dashboards, Consultant will provide on-line training to Contracting Members' Authorized Representatives and to NCPA staff on how to create additional reports and dashboards. Upon completion of the on-line training, NCPA shall work with Consultant to implement five (5) additional reports and five additional dashboards to be shared by the Contracting Members.

Deliverable 6: Create Communication Templates

Consultant will work with NCPA Project Manager and Contracting Member Authorized Representatives to create up to four (4) e-mail or mail-merge communication templates in Microsoft Word to be shared by the Contracting Members. These may be used, for example, to create customer commitment letters, application acceptance/decline letters and missing items letter.

NCPA Project Manager shall complete on-line training provided by Consultant in how to create communication templates, and work with Consultant to implement two (2) of the above-mentioned communication templates, in order to facilitate NCPA self-sufficiency in such tasks.

Deliverable 7: Customer Proposal Templates

Consultant shall create one (1) example customer proposal template, for use by the Contracting Members in dealing with their utility customers. Additional customer proposal templates may be developed on a time and materials basis by Consultant upon request by a particular Contracting Member. If additional customer proposal templates are developed, only those Contracting Members who agree to share the costs will be provided the templates.

Deliverable 8: Develop Customer Data Import/Update Template

As part of implementation of the Contracting Members' energy efficiency incentive programs, Consultant shall develop a standard template, for use by all Contracting Members, for customer data import and update. Consultant shall implement up to ten (10) custom fields (as directed by NCPA) to be shared by the Contracting Members to support Contracting Member needs, and shall also develop up to six (6) page layouts for the Contact and Account objects. To facilitate data entry efficiency. Consultant shall enable tracking of multiple addresses per customer.

Deliverable 9: Payment review and export

As part of implementation of the Contracting Members' energy efficiency incentive programs, Consultant shall develop a standard template for payment file export/import as described below. Individual Contracting Members shall use this format or may request that additional templates be developed on a time and materials basis by Consultant for those Contracting Members requesting it, at the cost of those requesting Contracting Members.

- Incentive payments shall be processed through the Contracting Members' financial systems.
- Users may view a list of Project records (or proxy Work Order records) which are ready for payment, based on stage or other filter criteria. Users may assign a Batch number (text) to one or more of these records in the list to initiate the payment process and update the payment status. As a best practice, the batch number may contain the date when the batch was generated. A workflow rule may be used to automatically update the Stage (status) or the associated Project or Work Order record.

- Users may print or export these records through a standard report which shall be created for this purpose, and which may be exported as an Excel or CSV file. Typically, this payment report will include the Project and/or Work Order unique identifier, the customer Account number, batch number, payment amount, Payee name and details, and payment address.
- Payments will be made at a Project or Work Order level, and shall consolidate incentives for the applicable retrofits.

Allowed users may import data from a payment results file. This file will consist of record IDs for the associated project and/or Work Order, along with additional payment details (e.g., payment ID, check #, check date, amount) to substantiate that payment has been made. A workflow rule may be set up to update the Stage (status) of the associated Project or Work Order records (e.g., "Payment Sent").

Deliverable 10: Address User Profiles and Security Issues

Consultant will work with NCPA and Contracting Members to identify user profiles, territories and roles (as necessary) and permissions to meet security requirements, and shall configure the energyOrbit™ solution to reflect this design. In particular, Consultant shall establish a Territory/Role structure to ensure that Contracting Members can see their own information (but not those of other Contracting Members), and to allow NCPA authorized individuals to access consolidated information from all Contracting Members.

As part of administrator training referenced above, Consultant shall introduce NCPA's system administrator to the fundamentals of User Profile administration and system administrators are encouraged to complete the available on-line tutorials on this topic provided by Salesforce.com. NCPA's system administrator, and other users with a System Administrator Profile, may control user IDs, activate/inactivate users, and reset user passwords. Users may also reset their own passwords after answering security questions, and a new one-time password will be sent to their specified user email address. NCPA may specify password strength settings, and password expiration policies. Each participating Member shall maintain separate and secure program information within the database. Contracting Members will not have access to each other's data.

Deliverable 11: Installation and Deployment

Consultant shall perform an Initial Installation of the energyOrbit™ solution, following establishment of NCPA's Force.com accounts. License fees for use of the energyOrbit™ solution shall commence following this Initial Installation.

Consultant shall develop and test additions and extensions to the core energyOrbit™ solution in a separate development and test environment. Throughout the Project, Consultant may deploy this new functionality to the NCPA production environment. Consultant shall endeavor to provide 24-hour advance notice of these updates, which shall typically be scheduled for Fridays. Consultant shall notify NCPA Project Manager of any such updates, including where practical, a short summary of changes. However, in some instances, emergency maintenance may require installation with less notice.

Deliverable 12: Develop Custom Functionality

Consultant shall develop Energy and Environmental Economics (E3) compliance reporting, consistent with model provided in RFP. This may include custom-programming, and may not be modifiable without assistance of Consultant in the future.

Consultant will develop water program tracking fields, supporting programs for Contracting Members that have water savings, based on specifications and guidance from the City of Roseville, if available. This effort will follow the same structure as other programs for energy savings, and shall be implemented by adding additional fields to track water quantities saved as part of measure, work order and project totals.

This deliverable will be provided at no additional cost, but may follow deployment of other programs for the City of Roseville as a new phase of work.

Deliverable 13: Provide Training

Consultant will prepare and deliver two 2-hour "train-the-trainer" sessions to NCPA staff which may be delivered via web, as well as functional training on modules during all stages of the project.

Consultant will provide an onsite group training with all Contracting Member Authorized Representatives, and additionally provide the following:

- Follow up webinar-based two (2) hour refresher training with individual Contracting Member representatives.
- Two (2) hour webinar Training for each Contracting Member as part of the program pilot deployment .
- Approximately six (6) hours of formal system administrator trainings for NCPA technical personnel, covering key topics of interest, including custom object structure, customization, reporting, profiles and security or similar matters.

Consultant will prepare training materials, as well as a mid-level "cookbook" (estimated to consist of approximately thirty (30) pages), to describe key activities for setting up a program, starting a project, entering retrofits/measures, and documenting key workflow and approval processes.

Consultant will invite NCPA Project Manager to watch (via web meetings) or participate in certain configuration activities to provide on-the-job training in use and maintenance of the energyOrbit™ solution and provide training sufficient to permit NCPA to then provide supporting training of Contracting Member personnel.

Consultant will prepare a set of frequently asked questions and solution for the Tier 1 support desk, and provide an additional two (2) hours of remote help desk training in basic support.

Deliverable 14: Ongoing License and Maintenance Fees

Consultant agrees to provide technical support as part of the license and maintenance fees. The primary

purpose of this deliverable is to address problems, potential “bugs” and advanced capability questions related to energyOrbit™. To that end, the following level of support will be provided:

- Best efforts will be made to respond to specific requests within one (1) business day, including an estimate for problem resolution. It is recognized that some items may require more than one business day to resolve.
- Ability for Contracting Members to submit support requests electronically twenty-four (24) hours per day, seven (7) days per week, and speak with live staff during standard business hours (9am-6pm Central Time, excluding weekend and holidays). Contracting Member inquiries will be initially reviewed by NCPA which will provide Tier 1 support. NCPA will prioritize Contracting Member inquiries and refer them to Consultant for Tier 2 support, in NCPA's discretion and subject to the limits noted below.
- General product upgrades, those general enhancements to the energyOrbit™ system which are offered at no additional cost to customers, will be provided to NCPA and the Contracting Members during the term of this Agreement. It is understood that some new functions may require additional configuration in order to take advantage of the capabilities, which configuration shall be provided by Consultant.
- Up to five (5) priority bug fixes per month – where energyOrbit™ fails to operate according to agreed upon specifications in a way which interferes with the ability of a Contracting Member to enter and process incentives.
- Up to forty (40) technical support requests during the first thirty (30) days that the product is operational.
- Up to ten (10) additional technical support requests incidents per month after the first month, to provide Contracting Members additional help or support (for example, creating a new program workflow, or guidance to create a special type of report).
- Monthly report summaries of case activities, along with a summary of the resolution will be provided by Consultant to NCPA each month during the term of the Agreement, by the tenth (10th) day of the following month.

Other Considerations

The following assumptions will be considered based on the scope of the project and deliverables identified above. Any changes to these assumptions may result in a scope adjustment to fees and/or implementation timeline.

- NCPA Project Manager will coordinate input from Contracting Members and serve as an authorized approver for deliverables and decisions related to system setup and configuration.
- NCPA will be responsible for providing training to Contracting Members beyond the initial deployment identified above.
- NCPA and Contracting Members will be responsible for preparing import data according to templates provided by Consultant, and will be responsible for the quality of such provided information.

- Consultant will not be importing historic project data as part of this scope of work. Individual utilities may arrange to import historic data under separate arrangement.
- NCPA Project Manager will provide content for efficiency measures. Consultant will provide a template for preparing the initial list of measures, which will be imported into energyOrbit™.
- Consultant will import Contracting Member specific data extracted from current tracking spreadsheets and systems, to populate the templates designed in conjunction with Consultant's work under this agreement.
- energyOrbit™ will only be used to administer and support programs for NCPA and Contracting Members. It may not be licensed or operated as a service bureau for other entities, including affiliates of either NCPA or Contracting Members.

END OF EXHIBIT A

EXHIBIT A-1

crmOrbit LICENSING MASTER AGREEMENT AND TERMS OF USE

THIS MASTER AGREEMENT AND TERMS OF USE is Exhibit A-1 to the Consultant Services Agreement between Northern California Power Agency (hereinafter called "CLIENT", "Customer") and crmOrbit, Inc. ("crmOrbit") a California corporation, having an office at 2693 Blucher Valley Road, Sebastopol, CA 94572, collectively "the Parties".

These energyOrbit "EO" Terms of Use ("Terms of Use") govern the provision of the energyOrbit Application Service by crmOrbit to CLIENT. These Terms of Use, Statements of Work ("SOW") signed by the Parties, and any policies or other documents expressly incorporated by reference herein or therein are collectively referred to as the "Agreement". The Agreement shall be effective as of the date set forth below the Customer signature (the "Effective Date").

If Customer signs and returns the Agreement and/or SOW but does not complete the date of signature, crmOrbit may fill in the date of signature with the date it receives the signed SOW.

1. Definitions.

- "EO Service" means the application referred to as energyOrbit which has been developed by crmOrbit and is available to operate in conjunction with the Salesforce.com® (SFDC) CRM and/or Force.com® Platform Service as a stand-alone product. Both editions are hosted by SFDC. The EO Service also includes any EO Service documentation and any other updates, or upgrades to such EO Service which may be provided by crmOrbit from time to time in connection with this service.
- "Consultant" means an individual or entity providing services or other assistance to crmOrbit or CLIENT, as applicable.
- "Us" means crmOrbit.
- "crmOrbit Content" means the audio, video and visual information, documents, software, products and services contained in, or made available to CLIENT in the course of using the EO Service.
- "SFDC" means Salesforce.com, Inc., the third party provider of application and platform services hosting the EO service in conjunction with the SFDC Service.
- "Force.com® platform" means the infrastructure provided by Salesforce.com including but not limited to database, user interface, security controls. For the purpose of definition of the term, "Force.com", Force.com is synonymous to SFDC Services.
- "SFDC Service" means the application or platform service being provided by SFDC with which the EO Service interoperates.

- "Start Date" means the date EO Services fees commence for the applicable organization as indicated in Addendum(s) that are executed in counterparts which, taken together, shall form one legal instrument of this Agreement.
- "User" means each CLIENT employee(s) or Consultant(s) who are (i) authorized to use the EO Service and have been supplied with Credentials by CLIENT (or by crmOrbit at CLIENT's request).
- "Additional Users" means additional users that are added to the pool of existing SFDC licensees subsequent to commencement of this Agreement.
- "Affiliated Organizations" or "Affiliates" means independent contractors, Trade Allies, Energy Services Companies (ESCOs), energy consultants, government agencies and regulatory regimes with whom CLIENT conducts business and has a need to share information tracked in the Service.
- "Client" means a utility or other agency that engages in a contractual relationship with CLIENT, Inc. for the administration, implementation and/or delivery of energy efficiency program services.

2. Service Provided.

- 2.1 License. crmOrbit grants CLIENT a license, allowing a limited number of named Users to use, administer and customize the EO Service for the sole purpose of administering, managing and tracking energy efficiency and conservation programs on behalf of its Clients according to terms specified in an attached Exhibit or Statement of Work to this Agreement. Without limiting the foregoing, CLIENT and its affiliates may not use the EO services to administer, manage and/or track other clients or energy efficiency programs except as provided for in a related SOW or Addendum to this Agreement.
- 2.2 Deployment. crmOrbit may provide professional services related to deployment of energyOrbit as specified in an applicable Addendum of Statement of Work to this Agreement.
- 2.3 Technical Support. If support is required by CLIENT, crmOrbit will provide support for the EO Service during the Term via the crmOrbit Support Services in accordance with terms specified in applicable SOW or Addendum or Service Level Agreement (SLA) between crmOrbit and CLIENT.
 - 2.3.1 Unless otherwise specified in an Addendum or Statement of Work, crmOrbit will provide Tier 2 technical support with an expected 1 business day response for contracts involving payment of a Licensing Fee. Technical support requests will be tracked by a formal tracking mechanism (based on Salesforce or other online tracking system). CLIENT shall provide Tier 1 support to its users and Clients.
- 2.4 Upon support request from CLIENT, crmOrbit will make an initial determination in good faith as to whether the issue is with the EO Service or the SFDC Service. If the issue is with the SFDC Service, CLIENT agrees to contact SFDC directly for support for the SFDC Service.

- 2.5 Upgrades. crmOrbit shall from time to time in crmOrbit's discretion provide upgrades to the EO Services at no additional charge to CLIENT. These upgrades may require additional professional services to take advantage of certain new functionality, and such professional services are not included in the upgrade. As a "cloud computing" or "software-as-a-service" solution, crmOrbit may centrally implement certain patches and bug fixes on behalf of its customers.
- 2.6 CLIENT may contact crmOrbit to purchase training for the EO Service, which shall be specified in an applicable Statement of Work.
- 2.7 Subcontracting. crmOrbit retains the right to subcontract any or all of the EO Service to be performed under this Agreement to a qualified subcontractor of crmOrbit's choosing. In such event, crmOrbit shall remain obligated to CLIENT for the work subcontracted. crmOrbit shall ensure that such subcontractors shall be bound by confidentiality agreements substantially similar to those signed by crmOrbit on behalf of CLIENT. crmOrbit agrees to notify CLIENT if and when subcontractors are to be used. CLIENT reserves the right to approve the use of specific subcontractors if there is a perceived conflict of interest or specific concern about the specific subcontractor selected by crmOrbit.

Licensor shall remain responsible for obligations, services and functions performed by subcontractors to the same extent as if such obligations, services and functions were performed by Licensor's employees and for purposes of this Agreement such work shall be deemed work performed by Licensor. Licensor shall be CLIENT's sole point of contact regarding the Services, including with respect to payment.

2.8 Escrow of Source Code.

Immediately following the Acceptance of the initial and subsequently delivered Software, Licensor, at CLIENT's expense, will provide a copy of the Source Code for such initial and subsequently delivered Software to a recognized third-party escrow agent under a duly executed escrow agreement (the "Escrow Agreement"). Throughout the term of the License, Licensor shall assure that such escrowed Source Code reflects the most current version of the Software licensed to CLIENT. Under the terms of the Escrow Agreement, CLIENT may itself or have designated third-parties audit the escrowed Source Code for compliance with the terms of this Agreement and the Escrow Agreement.

2.9 Use of Source Code.

If Licensor fails to provide support for the Software in accordance with any maintenance agreement between the Parties due to insolvency, abandonment of licensing or supporting the Software as a line of business, or otherwise, (a) CLIENT may access and use the Software's Source Code, applicable compilers, and other information and tools necessary to modify, upgrade, improve, or create derivative works from, the Source Code, either directly from Licensor or through the third-party escrow agent, as necessary for CLIENT to make continued use of the Software in its business, which access and use will otherwise be governed by the terms of this Agreement and by the Escrow Agreement, and (b) the License will be deemed to

have been automatically amended to include the right to modify, and to authorize a third-party to modify on CLIENT's behalf, the Source Code as provided herein. CLIENT's use of the Source Code under the terms of this Section 2.9 shall not constitute a termination of this Agreement.

3. **Order Process.** The initial order for the EO Service is set forth in the initial SOW and or Addendums(s) which references these Terms of Use. Orders for additional licenses will be made by mutual execution of an additional SOW and/or Addendum(s) and any such additional license will be provided access to the EO Service in accordance with terms contained in this Agreement. Any terms and conditions of any purchase orders or acknowledgements that are inconsistent with or in addition to the terms and conditions of this Agreement and an executed SOW or Addendum(s) will not apply.

4. Fees and Payment Terms.

- 4.1 CLIENT will pay crmOrbit the amounts set forth in Exhibit B of the consultant services agreement between CLIENT and crmOrbit for the EO Service or any other service specified. All payments for EO Services will be due as shown in Exhibit B of the consultant services agreement.
- 4.2 Added licenses will be subject to the following: (i) added licenses will be coterminous with the preexisting Term, (ii) or Term as specified in an Addendum to this Agreement. (iii) crmOrbit reserves the right to increase the price upon renewal, subject to negotiation by parties.
- 4.3 All payment obligations are non-cancelable and all amounts paid are nonrefundable. CLIENT is responsible for paying for all licensing ordered for the entire Term, whether or not CLIENT is actively using the EO Service except as otherwise provided in a Statement of Work or in Section 9 – Term and Termination. A suspension of service for overdue payment will not constitute a termination of the Agreement nor will it relieve CLIENT of any of its obligations or liabilities under the Agreement. CLIENT will continue to be charged EO Service fees during any period of suspension.
- 4.4 Payment from CLIENT is due within thirty (30) days from the date of invoice, unless stated otherwise in related Addenda or Scope of Work documents. CLIENT may be charged a late fee of 1.5 % per month (or the maximum rate allowed by applicable law if it is less) on any undisputed amount not paid when due. In addition, in the event that CLIENT is delinquent in the payment of any amounts due to crmOrbit, crmOrbit may suspend access to the EO Service within 10 business days of delinquency, without advance written notice to CLIENT.
- 4.5 The fees set forth in the SOW and/or Addendum(s) do not include taxes unless stated otherwise. Unless CLIENT provides crmOrbit with a valid tax exempt certificate on or before the Effective Date of this the Agreement, CLIENT will pay, and indemnify and hold crmOrbit harmless for, all applicable sales, use, VAT, excise, import, export, property, withholding or similar taxes or duties in connection with the provision of the EO Service to CLIENT by crmOrbit (including any interest or penalties thereon resulting from CLIENT's failure to pay such taxes or other charges on a timely basis). CLIENT will notify crmOrbit in writing in the event CLIENT experiences a change in its tax exempt status during the Term.

4.6 CLIENT will pay the License Fees due under this Agreement and under a formula specified in an applicable SOW or Addendum. Applicable fees shall be due and payable within 30 days from the beginning of the term in which the licenses will be used unless otherwise set forth in the applicable SOW or Addendum. CLIENT shall send a report documenting the Users who will access the system along with payment. crmOrbit shall have a right to audit all relevant records related to computation of license fees due, at a reasonable agreed-to time, at its own expense, once per calendar year. Should the results of such audit indicate that crmOrbit is due additional fees in excess of five percent (5%) of the amounts indicated by CLIENT reports, CLIENT shall reimburse crmOrbit for the additional amount due along with the cost of the audit and a service charge of four percent (4%) of any additional amounts due.

5. CLIENT Obligations.

5.1 User Administration. The EO Service will be password-protected and only Users who have properly registered and received a login ID and password ("Credentials") will be able to access the EO Service. CLIENT represents and warrants that each User that registers under CLIENT's account is, and during the Term will be an authorized agent of CLIENT for purposes of this Agreement. CLIENT will be solely responsible for administering and monitoring the confidentiality and use of the Credentials. Upon the termination of employment of any User and or access granted to affiliated organization, CLIENT will immediately terminate access of that individual to the EO Service. CLIENT shall: (i) notify crmOrbit promptly of any unauthorized use of any Credentials or any other suspected violation of this Agreement and (ii) not share IDs and passwords between two or more users and (iii) not impersonate another SFDC Service user or provide false identity information to gain access to or use the EO Service. This Agreement is not a sale and does not convey any rights of ownership in or related to the EO Service, the SFDC Service or the intellectual property rights owned by crmOrbit or SFDC. The salesforce.com name, the salesforce.com logo, and the product names associated with the Service are trademarks of salesforce.com or third parties, and no right or license is granted to use them.

5.2 Compliance with Laws. CLIENT is responsible for all activity occurring under CLIENT's User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with the use of the EO Service, including those related to data privacy, international communications and the transmission of technical or personal data.

5.3 Prohibited Uses. CLIENT may not modify, rent, sublease, sublicense, assign, use as a service bureau, copy, lend, adapt, translate, sell, distribute, derive works from, decompile or reverse engineer the EO Service or any crmOrbit intellectual property, except as explicitly permitted hereunder. Unless otherwise expressly set forth in an SOW and/or addendums(s), the EO Service is provided solely for the benefit of CLIENT, and not, by implication or otherwise, to any parent, subsidiary or affiliate of CLIENT. CLIENT may not permit access to the EO Service to a competitor of crmOrbit, except with crmOrbit's prior written consent. In addition, CLIENT may not access the EO Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes. CLIENT may use the EO Service only for CLIENT's business purposes. CLIENT and pre-authorized Users from organizations affiliated with the CLIENT shall not: (i) store infringing, obscene, threatening,

libelous, or otherwise unlawful or tortious material, including material in violation of third party privacy rights; (ii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iii) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (iv) attempt to gain unauthorized access to the EO Service or its related systems or networks.

6. Ownership and Confidential Information.

- 6.1 CLIENT Ownership. As between CLIENT and crmOrbit, CLIENT will retain all right, title and interest in and to any data, information or materials provided by CLIENT as well as all information processed by the EO Service regarding individual Users ("CLIENT Data"). CLIENT grants to crmOrbit a non-exclusive license to use, copy, store, modify and display the CLIENT Data solely to the extent necessary to provide the EO Service to CLIENT. CLIENT, not crmOrbit, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all CLIENT Data, and crmOrbit shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any CLIENT Data.
- 6.2 crmOrbit Ownership. crmOrbit will retain all right, title and interest in and to all proprietary rights with respect to the EO Service together with any and all crmOrbit Content and other technology that enables the provision of the EO Service, any training materials, product documentation, whitepapers, or deliverables provided by crmOrbit under the Agreement, and any suggestions, ideas, enhancement requests, feedback, recommendations for modifications or improvements to the EO Service provided by CLIENT. All rights not expressly granted to CLIENT hereunder or as part of an applicable addendum or statement of work are reserved by crmOrbit and its licensors.
- 6.3 Confidential Information. "Confidential Information" means all information disclosed by crmOrbit to CLIENT, before or after the Effective Date, and generally not publicly known. Confidential Information of crmOrbit includes, without limitation, the EO Service, Credentials, materials provided by crmOrbit, and any and all product documentation, whitepapers, product guides, data sheets and training materials. The Agreement, including the terms in the SOW, are Confidential Information. Confidential Information does not include information which CLIENT can document: (i) was in the possession of or known by it without an obligation of confidentiality prior to receipt from crmOrbit, (ii) is or becomes general public knowledge through no fault or acts of CLIENT; (iii) is or becomes lawfully available to CLIENT from a third party without an obligation of confidentiality; or (iv) is independently developed by CLIENT without use of any Confidential Information. CLIENT will only use the Confidential Information to exercise its rights or carry out its obligations under the Agreement and will protect the Confidential Information by using the same degree of care as it uses to safeguard its own confidential or proprietary information of a like nature from unauthorized use, disclosure, or dissemination, but no less than a reasonable degree of care. CLIENT will restrict access to Confidential Information to only its employees or Consultants or affiliated organizations who require such access in the course of their assigned duties and responsibilities and who have been informed of CLIENT's obligations of confidence and have agreed in writing to preserve the confidentiality of such information under terms and conditions no less restrictive than those set forth herein, provided that in the case of CLIENT, CLIENT may not permit a Consultant

which is a competitor of crmOrbit to access Confidential Information of crmOrbit without the express written approval of crmOrbit except as otherwise provided for in an executed Statement of Work or Exhibit to this agreement. In the event that any Confidential Information is required to be disclosed pursuant to any law (including the California Public Records Act), code or regulation, if permitted by law, CLIENT will give crmOrbit immediate notice thereof and will use its commercially reasonable efforts to cooperate with crmOrbit if crmOrbit seeks a protective order with respect thereto.

7. Warranty.

7.1 Exclusive Warranty. crmOrbit warrants that the EO Service will perform in all material respects the functions described in the then current product documentation for the EO Service. If the EO Service fails to operate as warranted in this Section 7.1 and CLIENT notifies crmOrbit in writing of the nature of the non-conformance ("Notice"), crmOrbit will make commercially reasonable efforts to promptly repair or replace the nonconforming EO Service without charge. If, after a reasonable opportunity to cure of no less than 45 days, crmOrbit does not remedy the non-conformance, CLIENT may no later than ninety (90) days after giving the Notice terminate the Agreement and receive a refund of the prepaid EO Service fees for the period following the date of Notice.

7.2 Warranty Disclaimer. Except for the warranties expressly described in these Terms of Use, crmOrbit makes no other warranties with respect to the EO Service or other services provided by crmOrbit, express, implied or statutory, and disclaims any implied warranties of merchantability, fitness for a particular purpose or any warranty arising from course of dealing, usage or trade practice. crmOrbit does not warrant that the EO Service and the CLIENT Data stored through the use of the EO Services are not susceptible to intrusion, attack or computer virus infection.

8. Limitation of Liability.

Except for damages related to negligent breach of Confidentiality, neither Party's aggregate liability under this Agreement for any claim arising under or relating the Agreement, the EO Application Services or any other services provided by crmOrbit under any theory of liability including contract, strict liability, indemnity, tort (including negligence) or otherwise, will not exceed the fees due to crmOrbit up until the date of termination. In no circumstances will either party be liable for any special, indirect, cost of cover, incidental, exemplary, punitive, or consequential damages, such as, but not limited to, loss of revenues.

CLIENT acknowledges that CLIENT Data will be transmitted outside of the EO Service and SFDC's system and to that extent; neither SFDC nor crmOrbit are responsible for the privacy, security or integrity of the CLIENT Data. The EO Services is subject to any limitations, delays, and other problems with the SFDC Service and those inherent in the use of the Internet and electronic communications. crmOrbit is not responsible for any delays, delivery failures, or other damage resulting from the foregoing.

9. **Term and Termination.** The initial term of the Agreement is the period as specified in Addendum(s) attached to this Agreement. Subject to any applicable volume discounts, the EO Service Fees for any Renewal Term may be annually increased no greater than 3.5% and shall

be invoiced on the same schedule as in effect for the billing period immediately prior to the expiration of the Initial Term. This agreement shall automatically renew with same terms unless terminated by one of the parties. CLIENT shall solicit renewal terms and pricing. Only an executed copy of CLIENT's Purchase Order and mutually agreed endorsed agreements constitute renewal of this agreement. crmOrbit may terminate the Agreement by written notice if CLIENT commits a material breach of the Agreement, which breach is not cured within forty-five (45) days of written notice thereof. In the event of a breach by crmOrbit of its obligations hereunder which breach is not cured within forty five (45) days of written notice thereof, CLIENT may terminate that portion of the Agreement applicable to the EO Service or other service by written notice to crmOrbit. Upon termination of the Agreement or termination of the EO Service or other crmOrbit services, as the case may be, crmOrbit shall immediately cease providing any such EO Service or other services.

- 9.1 License Cancellation for Change in Business Conditions. Notwithstanding Section 4.3, CLIENT may cancel a License subscription associated with a particular Statement of Work upon 30 days written notice to crmOrbit in the event that:
- 9.1.1 Client provides written notice that the energyOrbit solution is unable to support regulatory reporting requirements, provides details on what is needed to support changed regulatory reporting requirements, and crmOrbit is unable to make changes to conform to new requirements within 45 days of notice.
 - 9.1.2 License cancellation under this section is subject to the following:
 - 9.1.2.1 All license fees and payment obligations due for the first two (2) years of the contract shall be due and payable according to the terms of the applicable SOW, even if cancellation is prior to this date.
 - 9.1.2.2 Upon License cancellation under this section, Client agrees to pay a one-time penalty equal to 35% of the annual total license and user fees, as well as any fees accrued to date based upon the contract and associated Statements of Work. Effective Cancellation Date will be upon receipt of these fees.
 - 9.1.2.3 Except as noted in Sections 9.1.4.1 and 9.4.1.2 above, upon Effective Cancellation Date, license fees for the Cancelled SOW shall cease to accrue, and future payment obligations for this SOW shall be cancelled.
 - 9.1.2.4 crmOrbit shall be relieved of any obligations for support and maintenance of energyOrbit with respect to cancelled licenses as of the Effective Cancellation Date.
 - 9.1.2.5 CLIENT may export data from the energyOrbit solution using standard report features and a weekly full data export feature which is part of the Force.com platform. Once cancellation fees are received, energyOrbit will provide up to 40 hours of assistance to transfer data out of the energyOrbit environment. CLIENT may engage crmOrbit on a time and materials or fixed fee basis to assist with additional data migration to support a system transition through execution of a Statement of Work or Change Order to this Agreement.

9.1.2.6 Other than relief of obligations as provided in this section, surviving provisions of this Agreement and non-cancelled Statements of Work shall remain in force.

10. Publicity.

crmOrbit may identify CLIENT as a customer of crmOrbit. Each party may issue a press release announcing the relationship formed by the Agreement, subject to the prior approval of the other party, not to be unreasonably withheld or delayed.

11. Exceptions.

11.1 EO Service Exclusions. Notwithstanding anything to the contrary in this Agreement, crmOrbit will have no liability under this Agreement, with respect to: (i) customizations of the SFDC and/or EO Service by CLIENT, its Users or Consultants, (ii) use of the EO Services in violation of this Agreement or other than in accordance with the published user documentation; (iii) failures which are caused by other software or hardware products including the SFDC Services.

11.2 SFDC Service Changes. In addition, in the event SFDC (i) alters the SFDC Service in such a way as to materially adversely impact the operation of the EO Service, or (ii) no longer agrees to host the EO Service under the same terms and conditions as are currently in place, then crmOrbit may in its sole discretion restore the operation of the EO Service in a reasonable period of time or cease offering the EO Service. In the latter event, crmOrbit will refund the applicable prepaid EO Service fees for the period following the date the EO Service ceases to be interoperable with the SFDC Service or the EO Service ceases to be hosted by SFDC, as applicable. The remedies set forth in this Section are the sole remedies for a failure to provide the EO Service due to the foregoing reasons, and crmOrbit shall have no other obligation or liability with respect thereto.

12. **Governing Law.** This Agreement shall be governed exclusively by, and construed exclusively in accordance with, the laws of the United States and the State of California, without regard to its conflict of laws provisions.

13. **Miscellaneous.** The Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all previous agreements or representations, whether oral or written. The Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect. The failure of either party to enforce at any time any of the provisions of this Agreement will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the right of either party to enforce each such provision thereafter. The express waiver by either party of any provision of this Agreement will not constitute a waiver of any future obligation to comply with such provision. The Agreement will be construed and governed in accordance with the laws of the state of California, without reference to the conflict of laws provisions of any jurisdiction. Unless otherwise elected by crmOrbit in writing for a particular instance (which crmOrbit may do at its option), the sole

jurisdiction and venue for actions related to the subject matter of this Agreement will be in the County of Placer, California.

14. **Venue.** The state and federal courts located in or covering Placer County in California shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums, whether on the basis of the inconvenient forum doctrine or otherwise.
15. **Arbitration.** Any dispute arising out of or relating to this Agreement other than a dispute requiring urgent relief shall be resolved solely by final and binding arbitration as follows. Unless the parties otherwise agree in writing, the arbitration shall be conducted in Placer County California before a single arbitrator. The arbitrator shall have relevant knowledge and/or experience in Internet-based online services and shall be jointly selected and mutually approved by the parties or, if the parties are unable to agree, shall be appointed by the American Arbitration Association ("AAA"). The arbitration shall be conducted in accordance with the AAA's then current commercial arbitration rules. The parties initially shall share equally the fees and expenses of the arbitration. However, the arbitrator may award the prevailing party (if applicable and as determined by the arbitrator) all such fees and expenses (including without limitation reasonable attorneys' fees) and the arbitrator should award such fees and expenses if he or she determines that the party acted unreasonably or other than in good faith. Any arbitration decision so rendered shall be final and binding, and judgment thereon may be entered in any court of competent jurisdiction.
16. **Notices.** Both parties consent to the jurisdiction of such courts with respect to any such actions and agree that process may be served in the manner provided herein for giving of notices or otherwise as allowed by California law. If any action is brought by either party to the Agreement against the other regarding the subject matter hereof, the substantially prevailing party will be entitled to recover reasonable attorney fees and reasonable expenses of litigation. Notices under the Agreement shall be in writing, signed and provided to the contact and address indicated in the Agreement provided, that a party may change such contact or address by written notice to the other party. Notice will be considered effective on the earlier of actual receipt or: (a) one (1) day after posting when sent via an express commercial courier; or (b) five (5) days after posting when sent via certified mail, return receipt requested. Notice will be sent to the address for each party set forth on the first page of this Agreement, or at such other address as will be given by either party to the other in writing. Notices to crmOrbit will be addressed to the attention of: CEO. Failure to perform hereunder shall be excused to the extent that performance is rendered impossible by act of war, terrorism, strike, fire, flood, governmental acts or orders or restrictions or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party. This Agreement (including SOWs, and Addendums) may be executed in counterparts which, taken together, shall form one legal instrument. Any executed copy of the Agreement made by reliable means (e.g., photocopy, scan, or facsimile) is considered an original.

END OF EXHIBIT A-1

EXHIBIT B
COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, amount shall **NOT TO EXCEED FOUR HUNDRED THIRTY-EIGHT THOUSAND EIGHT HUNDRED SEVENTY-ONE DOLLARS AND SIXTY-THREE CENTS (\$438,871.63)**. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

Item	One-time Implementation Costs	Annual Recurring Costs	Comments
Consulting and implementation	\$83,145.27		Fixed fee
energyOrbit™ license, support/maintenance fees		\$69,045.27	Please see below for details, up to 45 users
Customer Web Application Portal		\$2,100	Non-licensed users can enter applications on line. Up to 7,000 applications per year, not to exceed 7,000 active logins.
Totals	\$83,145.27	\$71,145.27	

Pricing Notes:

- Additional consulting beyond the scope of this agreement provided specifically to NCPA member utilities will be provided at needed for in blocks of 30 hours at a \$100 per hour, under a separate agreement between Member and Contractor.
- License Fees shall commence upon delivery by Contractor of the included deliverables for the NCPA initial template programs.
- Any incremental time and materials charges for design of additional scope items shall be billed within 10 days of the end of the month in which the time was incurred, and payment shall be due and payable within 30 days of receipt of invoice.
- NCPA shall reimburse Contractor for actual, reasonable travel-related expenses for travel approved in advance by NCPA (at coach rates and IRS mileage reimbursement rates), as well as approved third-party software expenses as might be required. All reimbursement shall be due and payable within 15 days of submission of an itemized expense report with attached receipts. NCPA's Project Manager may approve, in writing, additional travel expenses beyond the "not to exceed" amount in an amount not to exceed fifteen thousand (\$15,000) dollars."
- NCPA shall not be responsible for Contractor travel to and between Contractor offices, office space, communications and incidental expenses of Contractor including telephone, facsimile, and photocopying charges.
- Payments shall be due at the times and in the amounts shown on Table 1 which is attached to this Exhibit.

NOTE: As a public agency, NCPA shall not reimburse Consultant for costs in excess of those permitted by the Internal Revenue Service.

Table 1
Payment Schedule

Table 1.			
Payable/Due date	Category	Amount	Description
Payment #1: Project commencement (Implementation Fee – 30%) (Initial License Fee) Date: 30 days after contract begins	Professional Services energyOrbit licenses/hosting	\$29,943.58	Project Implementation License fees for development purposes
Payment #2: (20% of implementation) Date: 60 days after contract begins	Professional Services	\$16,629.05	Project Implementation (Configuration of NCPA pilot program)
Payment #3: (20% of implementation) Date: 90 days after contract begins	Professional Services	\$16,629.05	Project Implementation Delivery of all functional enhancements
Payment #4: (20% of implementation) Date: 120 days after contract begins	Professional Services	\$16,629.05	Project Implementation Deployment of seven member utility programs
Payment #5: (10% of implementation) Final Signoff Date: No later than 7/30/2011, or 30 days following completion of deliverables, whichever is sooner.	Professional Services	\$8,314.53	Final Sign off- training complete, etc
First Year License Fees Beginning 7/1/2012	energyOrbit licenses / hosting	\$73,000	Remaining license fees for first year (Up to 45 users)
Annual License Fees Beginning 7/1/2013		\$71,145.27	Quarterly payments, provided to Contractor each September 30, December 31, March 31, and June 30.
<p align="center"><u>Adjustments to Payment Schedule if Additional NCPA Member Utilities Join the Project</u></p> <ul style="list-style-type: none"> • One time Implementation fee- \$20,000 • Per user fees = \$500/user/year. \$750/admin user/year • License fees = 2% of DSM and water savings program incentive budget 			

END OF EXHIBIT B



NCPA LEGISLATIVE AND REGULATORY MEMBER SERVICES AGREEMENT FOR THE ENERGY EFFICIENCY DATABASE PROGRAM

This NCPA Legislative and Regulatory Member Services Agreement for the Energy Efficiency Database Program ("Agreement") is made by and between the NORTHERN CALIFORNIA POWER AGENCY ("NCPA"), a joint public powers agency with offices located at 651 Commerce Drive, Roseville, California and certain of its members ("Contracting Members") (together sometimes referred to herein individually as "Party" and collectively as "Parties") as of _____, 2012 (the "Effective Date") in Roseville, California.

Section 1. RECITALS

This Agreement is entered into based on the following facts, among others:

1.1 NCPA is a public agency created by a joint powers agreement established under California law for the purpose of assisting its members in the efficient use of their common powers.

1.2 Contracting Members are engaged in, among other things, transmitting and distributing electric power within their respective cooperative limits. Contracting Members are also members of NCPA. Contracting Members desire that NCPA provide Contracting Members with the L&R Member Services described in this Agreement.

1.3 Article III, section 3 of the "Amended and Restated Northern California Power Agency Joint Powers Agreement" ("the JPA") entitled "Powers and Functions" provides that, "[n]one of the debts, liabilities or obligations of NCPA shall be the debts, liabilities or obligations of any of the members of NCPA unless assumed in a particular case by resolution of the governing body of the member to be charged." Notwithstanding the foregoing, Article V, section 1 of the JPA entitled "General Provisions" provides that "[t]he governing Commission of NCPA is authorized to procure public liability and other insurance as it deems advisable to protect NCPA and each of the parties hereto, charging the cost thereof to the operating costs of NCPA."

1.4 NCPA and each of its Members intend to enter into a Legislative and Regulatory Program Agreement ("the L&RPA"). The L&RPA is intended to provide for certain legislative and regulatory ("L&R") services which will be provided to, and paid for by, all the Members by NCPA as "core services" of the JPA, and to provide that other L&R Member Services may be provided to, and paid for by, less than all the Members by NCPA from time to time upon the request of a subset of Members. This Agreement provides for such non-core L&R Member Services to be provided to the Contracting Members who constitute such a subset, and is intended to be consistent with the planned L&RPA, but the validity of this Agreement is not contingent upon later adoption of the L&RPA.

1.5 Contracting Members desire to secure L&R Member Services under this Agreement in a manner that balances its interests and the interests of other non-participating NCPA Members with the ongoing financial viability and professional responsibilities of NCPA. Accordingly, Contracting Members desire to secure L&R Member Services under this Agreement by accepting a limited insurance based recourse against NCPA, with the option of procuring additional insurance at Contracting Members' sole expense, thereby insuring that NCPA will substantially limit its risk for the provision of such L&R Member Services, and which, in turn, allocates risks back to the Contracting Members in the event NCPA is not adequately insured.

NOW THEREFORE, NCPA and Contracting Members agree as follows:

Section 2. DEFINITIONS

Whenever used in this Agreement with initial capitalization, these terms shall have the following meanings as applicable, whether in the singular or plural:

2.1 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Pacific time.

2.2 "Contracting Member" or "Contracting Members" means one or all of the NCPA Members which have executed this Agreement.

2.3 "Good Utility Practice" shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region and consistently adhered to by the electric utility industry.

2.4 "NCPA Members" or "Members" shall mean the signatories to the JPA or those agencies which have executed an Associate Member Agreement with NCPA.

2.5 "Participation Percentage" shall mean the relative share of costs under this Agreement to be paid by a particular Contracting Member pursuant to Exhibit B relative to the share of costs to be paid by the other Contracting Members.

2.6 "Stranded Costs" shall mean all costs incurred by NCPA in providing Services to Contracting Members under this Agreement that could not reasonably be avoided by NCPA from the date it receives a written Notice of Termination. Such costs may include, but not be limited to, salary and employment costs, rent, utilities, or contracts incurred to provide Services under this Agreement, as well as any termination costs incurred to crmOrbit.

2.7 "Uncontrollable Force" shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm, flood, earthquake, explosion, any curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities or any other cause beyond the reasonable control of the Party claiming Uncontrollable Force which could not be avoided through the exercise of Good Utility Practice.

Section 3. L&R MEMBER SERVICES TO BE PROVIDED; AUTHORIZED REPRESENTATIVES; STANDARD OF PERFORMANCE

3.1 This Agreement is entered into by the Parties in order for NCPA to provide L&R Member Services, consisting of on-demand computing to the marketplace (also known as Software as Service or SaaS software) energy efficiency database services to each of the Contracting Members. NCPA shall provide such L&R Member Services, along with appropriate software licensing and maintenance, through a contract between NCPA and a third party provider, crmOrbit, Inc. as further described in Exhibit A hereto ("L&R Member Services").

It is the intent of this Agreement that Contracting Members each authorize and direct NCPA to enter into such third party agreement. Each Contracting Member agrees to pay to NCPA its Participation Percentage share of the costs NCPA incurs in so doing, including all administrative costs incurred by NCPA including its staff time and attorneys' fees, and agrees to conduct itself consistent with the obligations undertaken by NCPA in such crmOrbit agreement.

3.2 The following are the Authorized Representatives of the parties for contract administration purposes under this Agreement:

Northern California Power Agency:
Scott Tomashefsky
Regulatory Affairs Manager
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678
(916) 781-4291 / 782-2191 FAX
mailto: scott.tomashefsky@ncpa.com

NCPA's Authorized Representative is sometimes referred to as the NCPA Project Manager in this Agreement.

Alameda:
Girish Balachandran
General Manager
Alameda Municipal Power
2000 Grand Street
PO Box H

Alameda, CA 94501
(510) 748-3901
Girish@alamedamp.com

Biggs:
Pete Carr
City Administrator
465 C Street
Biggs, CA 95917
(530) 868-5493
Bigg2@biggs-ca.gov

Healdsburg:
Terry Crowley
Electric Utility Director
401 Grove Street
Healdsburg, CA 95448
(707) 431-3340
tcrowley@ci.healdsburg.ca.us

Lodi:
Elizabeth Kirkley
Utility Director
1331 South Ham Lane
Lodi, CA 95242
(209) 333-6828
ltremble@lodielelectric.com

Lompoc:
Ron Stassi
Utility Director
100 Civic Center Plaza
Lompoc, CA 93436
(805) 875-8299
r_stassi@ci.lompoc.ca.us

Plumas-Sierra:
Robert Marshall
General Manager
73233 State Highway 70
Portola, CA 96122
(530) 832-4261
shenson@psrec.coop

Truckee Donner:
Stephen Hollabaugh
General Manager
11570 Donner Pass Road
Truckee, CA 96161
(530) 587-3896
stephenhollabaugh@tdpud.org

No Authorized Representative is authorized to amend any provision of this Agreement except in accordance with Section 12.16. Any Party may amend its Authorized Representative or contact information by providing written notice of the changes to each other Party.

3.3 Standard of Performance. NCPA will perform and or oversee, as applicable, the L&R Member Services using that level of skill and attention reasonably required to complete the L&R Member Services in a competent and timely manner. Contracting Members shall, however, have direct responsibility for interfacing with crmOrbit as provided in Exhibit A. Contracting Members will perform such tasks as necessary to implement the energy efficiency programs with that level of skill and attention reasonably required to complete and operate them in a competent and timely manner.

3.4 Assignment of Personnel. NCPA shall assign only competent personnel to perform L&R Member Services pursuant to this Agreement. Contracting Members approve the assignment of crmOrbit as the third party provider of services.

Section 4. TERM AND TERMINATION

4.1 Authorization to Perform Services. NCPA is not authorized to perform any initial L&R Member Services, or incur any costs whatsoever, under the terms of this Agreement until its receipt of a written resolution and/or other appropriate/applicable authorization from each of the Contracting Members' governing bodies confirming Contracting Members' authority to enter into this Agreement and confirming that the Contracting Members have allocated funds for and approved contract payments to NCPA under this Agreement.

4.2 Term. The term of this Agreement shall begin on the Effective Date and shall end on the date that the crmOrbit consultant services agreement terminates.

4.3 Early Termination and Stranded Costs.

4.3.1 This Agreement may be terminated by NCPA as to all Contracting Members upon ninety (90) days written notice ("Notice of Termination") to Contracting Members.

4.3.2 This Agreement may be terminated by all Contracting Members, upon ninety (90) days written notice to NCPA ("Notice of Termination"). To be effective, the Notice of Termination must be executed by each Contracting Member.

Provided, however, that if so terminated, Contracting Members shall each pay NCPA their Participation Percentage share of all fees and costs required under this Agreement through the effective date of the Notice of Termination plus all Stranded Costs, if any. Upon payment of the above amounts, no Party shall have any further obligations under this Agreement except as otherwise set forth in Section 5.7 regarding the survival of defense and indemnity obligations.

4.3.3 This Agreement may be terminated by any given Contracting Member, upon ninety (90) days written notice ("Notice of Termination") to all other Parties.

Provided, however that the terminating Contracting Member shall pay NCPA its Participation Percentage share of the fees and costs required under this Agreement through the effective date of the Notice of Termination plus all Stranded Costs, if any. Upon payment of the above amounts, the terminating Contracting Member shall have no any further obligations under this Agreement except as otherwise set forth in Section 5.7 regarding the survival of defense and indemnity obligations. The participation percentages of all remaining non-terminating Contracting Members shall be proportionately adjusted to account for the withdrawal of the terminating Contracting Member(s).

Section 5. INDEMNITY AND INSURANCE

5.1 Limitation of NCPA's Liability.

5.1.1 Except as provided in this section 5.1, NCPA shall not at any time be liable for any injury or damage occurring to a Contracting Member or any other person (including crmOrbit) or property from any cause whatsoever arising out of this Agreement.

5.1.2 The provisions of section 5.1.1 shall not apply where the injury or damage occurring to a Contracting Member is caused by the active negligence of NCPA or of any employee, agent or contractor of NCPA (including crmOrbit), and provided that any liability under this subsection is limited to the extent of the actual coverage and coverage limits of the NCPA insurance policies described in this Section 5.

5.1.3 Contracting Members Liable for NCPA's Deductibles and or Self-Insured Retentions. Notwithstanding Section 5.1.2 above, the Contracting Members agree to reimburse NCPA, in a timely manner, for all deductibles and/or self-insured retentions payable for any claim, liability or damage arising out of this Agreement.

5.2 Indemnification of NCPA. Except as specified in Section 5.1.2 above, each Contracting Member shall, at its sole cost and expense, indemnify and hold harmless NCPA and all associated, affiliated, allied, member and subsidiary entities of NCPA, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees arising out of this Agreement, including any claims by crmOrbit.

5.3 Defense of Indemnitees. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, each Contracting Member shall, upon reasonable prior written notice from any of the Indemnitees, at that Contracting Member's sole cost and expense, resist and defend the same with legal counsel mutually selected by Indemnitee and the Contracting Member, unless mutual selection of counsel is expressly prohibited by an applicable insurance policy; provided however, that neither Indemnitee nor that Contracting Member shall admit liability in any such matter or on behalf of the other without express written consent, which consent shall not be unreasonably withheld or delayed, nor enter into any compromise or settlement of any claim for which Indemnitees are indemnified hereunder without prior express written consent. A Contracting Member's duty to defend shall begin upon receipt of a written notice identifying with specificity the allegations that give rise to this duty to defend.

Any Contracting Member required to defend and indemnify pursuant to this section may, in those circumstances in which it is not wholly at fault, seek equitable contribution from each of the other Contracting Members.

5.4 Notice. The Parties shall give each other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 5.

5.5 Insurance. During the term of the Agreement and prior to beginning any work under this Agreement, NCPA shall maintain, or cause to be maintained, in full force and effect, and at its sole cost and expense, the types and limits of liability insurance as are annually approved by the governing Commission of NCPA. The types and limits of liability insurance that are applicable to this Agreement are evidenced in policy summaries, which are attached hereto as Exhibit C. NCPA warrants and represents that the types of liability insurance and coverage limits shown in Exhibit C are in full force and effect and shall remain so during the term of this Agreement unless NCPA gives prior written notification (of not less than thirty (30) days) of modification, cancellation or rescission of such coverage.

5.6 Contracting Members' Acknowledgment of Option to Secure Additional Insurance. The Contracting Members acknowledge that there are limitations on NCPA's liability to the Contracting Members under this Section 5 and that each individual Contracting Member may need

to purchase additional insurance of its own to cover the additional risks and the potential additional liabilities it is assuming under this Agreement. Contracting Members each agree that it will cause, with respect to any additional insurance it obtains or which is otherwise available to the Contracting Member, its insurers to issue an endorsement providing a waiver of subrogation rights as to Indemnitees.

5.7 Survival of Obligations. The limitation of liability, defense and indemnity obligations of Section 5 shall survive the termination of this Agreement.

Section 6. COMPENSATION, CHARGES & RESERVES

6.1 In consideration of the L&R Member Services received, each Contracting Member hereby agrees to pay NCPA their Participation Percentage of costs incurred by NCPA.

NCPA and Contracting Members acknowledge and agree that compensation paid by Contracting Members to NCPA under this Agreement is based upon NCPA's estimated costs of providing the L&R Member Services required hereunder, including salaries and benefits of employees and subcontractors of NCPA, if any. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which NCPA and its employees, agents, and subcontractors may be eligible. Contracting Members therefore have no responsibility for such contributions beyond compensation required under this Agreement.

Section 7. BILLING AND PAYMENT

7.1 Invoices. NCPA shall submit invoices to each Contracting Member during the term of this Agreement, based on the respective Participation Percentage of each for L&R Member Services performed and reimbursable costs incurred prior to the invoice date. Such invoices may, in NCPA's discretion, be combined with NCPA's monthly All Resources Bill sent to all NCPA Members.

7.2 Payment. Contracting Member shall make payments, based on invoices received in accordance with the schedule in Exhibit B, for L&R Member Services satisfactorily performed, and for authorized reimbursable costs incurred. Contracting Member shall have thirty (30) days from the date of the invoice to pay NCPA, or such other time as is specified in an All Resources Bill if the invoices for L&R Services is combined with the All Resources Bill.

Payments shall be remitted directly to:

Northern California Power Agency
651 Commerce Drive
Roseville, California 95678
Attn: Accounts Receivable

Except for an "Uncontrollable Force" as described in Section 9 hereof, any amount due and payable but not paid by a Contracting Member within thirty (30) days following the date of the invoice shall bear interest at the per annum prime rate (or reference rate) of the Bank of America NT & SA, then in effect, plus two (2%) percent per annum computed on a daily basis until paid. NCPA will mail all invoices within twenty-four (24) hours of the invoice date thereon.

The postmark date on the envelope containing payment by check shall be used to determine timeliness of payment, except that payments received later than seven (7) days after the due date shall be declared late without regard to postmark date. An invoice coming due on a day which is not a Business Day shall be due on the next following Business Day.

7.3 Billing Dispute. If all or any portion of a bill is disputed by a Contracting Member, the entire amount of the bill shall be paid when due, and NCPA's Authorized Representative shall be concurrently provided written notice of the disputed amount and the basis for the dispute. NCPA shall reimburse any amount determined to have been incorrectly billed, within ten (10) days after such determination.

7.4 Total Payment. Contracting Members shall pay for the L&R Member Services to be rendered by NCPA pursuant to this Agreement. A Contracting Member shall not pay any additional sum for any expense or cost whatsoever incurred by NCPA in rendering L&R Member Services pursuant to this Agreement unless the Agreement has been modified by a properly executed change order or amendment in accordance with this Agreement.

Contracting Members shall make no payment for any extra, further, or additional service pursuant to this Agreement unless the Agreement has been modified by a properly executed change order or amendment in accordance with this Agreement.

In no event shall NCPA submit any invoice for an amount in excess of the maximum amount of compensation provided above (if any) either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment in accordance with this Agreement.

7.5 Hourly Fees. The L&R Services require that NCPA staff perform various tasks as specified in Exhibit A. NCPA may charge Contracting Members for such time at hourly rates which reimburse NCPA for its costs, including all benefits, for such employees as are used, in a manner consistent with the L&RPA (if the L&RPA is in force). NCPA shall not charge any overhead beyond such hourly rates.

7.6 Reimbursable Expenses. Expenses not specified in the Exhibits as being the responsibility of the Contracting Members are not chargeable to Contracting Members.

7.7 Payment of Taxes. NCPA is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

7.8 Payment upon Termination. In the event that one or more Contracting Members or NCPA terminates this Agreement pursuant to Section 4, the terminating Contracting Member or Members shall compensate the NCPA for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination, in addition to Stranded Costs applicable to that terminating Contracting Member and any early termination costs imposed by crmOrbit as provided in Section 4. NCPA shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

7.9 Authorization to Perform L&R Member Services. NCPA is not authorized to perform any L&R Member Services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from each of the Contracting Members' Authorized Representatives following receipt of the required approvals under the terms of this Agreement.

Section 8. STATUS OF NCPA; FACILITIES AND EQUIPMENT; CONTRIBUTIONS

8.1 Independent Contractor. At all times during the term of this Agreement, NCPA shall be an independent contractor and shall not be an employee of Contracting Members. Contracting Members shall have the right to control NCPA only insofar as the results of NCPA's L&R Member Services rendered pursuant to this Agreement and assignment of personnel pursuant to Section 3.4; however, otherwise Contracting Members shall not have the right to control the means by which NCPA accomplishes L&R Member Services rendered pursuant to this Agreement.

Notwithstanding any other agency, state, local or federal policy, rule, regulation, law, or ordinance to the contrary, NCPA and any of its employees, agents, and subcontractors providing L&R Member Services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by any Contracting Member, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of any Contracting Member and entitlement to any contribution to be paid by any Contracting Member for employer contributions and/or employee contributions for PERS benefits.

8.2 Facilities and Equipment. There are no NCPA facilities and equipment necessary to perform the L&R Member Services required by this Agreement or provided. All facilities and equipment will be provided by crmOrbit.

8.3 NCPA Contribution to Costs. During the term of this Agreement, NCPA agrees that it will, from its general L&R Member Services Program budget, and subject to annual appropriation in the NCPA Annual Budget by the NCPA Commission, contribute thirteen-thousand one hundred forty-five dollars and twenty-seven cents (\$13,145.27) during fiscal year 2011-2012, and thirteen-thousand one hundred forty-five dollars and twenty-seven cents (\$13,145.27) in each of the next five (5) fiscal years (for a total of seventy-eight thousand eight hundred seventy-one dollars and sixty-three cents (\$78,871.63) towards the costs of the L&R Member Services provided for by this Agreement. The Parties agree that the NCPA contribution will be allocated by NCPA solely to, and

paid to NCPA by, the Contracting Members and not by other NCPA Members.

Section 9. UNCONTROLLABLE FORCES

9.1 Obligations of the Parties, other than those to pay money when due, shall be excused for so long as and to the extent that failure to perform such obligations is due to an Uncontrollable Force; provided, however, that if a Party is unable to perform due to an Uncontrollable Force, such Party shall exercise due diligence to remove such inability with reasonable dispatch. Nothing contained in this Agreement shall be construed as requiring a Party to settle any strike, lockout, or labor dispute in which it may be involved, or to accept any permit, certificate, contract, or any other service agreement or authorization necessary for the performance of this Agreement which contains terms and conditions which a Party determines in its good faith judgment are unduly burdensome or otherwise unacceptable.

9.2 Each Party shall notify the others promptly, by telephone to the other Parties' operating personnel and Authorized Representatives identified in Section 3.2, upon becoming aware of any Uncontrollable Force which may adversely affect the performance under this Agreement. A Party shall additionally provide written notice in accordance with Section 12.8 to the other Parties within twenty-four (24) hours after becoming aware of an Uncontrollable Force. Each Party shall notify the others promptly, when an Uncontrollable Force has been remedied or no longer exists.

Section 10. LEGAL REQUIREMENTS

10.1 Governing Law. The laws of the State of California shall govern this Agreement, without regard for the choice of law doctrine.

10.2 Compliance with Applicable Laws. NCPA shall comply with all laws applicable to the performance of the L&R Member Services hereunder.

10.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, NCPA and any subcontractors shall comply with all applicable rules and regulations to which a Contracting Member is bound by the terms of such fiscal assistance program.

10.4 Licenses and Permits. NCPA represents and warrants to Contracting Members that NCPA and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that is legally required to practice their respective professions. NCPA represents and warrants to Contracting Members that NCPA and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions.

10.5 Nondiscrimination and Equal Opportunity. NCPA shall not discriminate, on the

basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by NCPA under this Agreement. NCPA shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of NCPA thereby.

NCPA shall include the provisions of this Subsection in its subcontract with crmOrbit approved by this Agreement, and in any other subcontract it may enter into.

Section 11. KEEPING AND STATUS OF RECORDS.

11.1 Records Created as Part of NCPA's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that NCPA prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the specific Contracting Member for whom it was prepared (or the joint property of the Contracting Members if prepared for all of them). NCPA hereby agrees to deliver those documents to the respective Contracting Members upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the Contracting Members and are not necessarily suitable for any future or other use or for use by third parties.

Contracting Members and NCPA agree that, until final approval by the Contracting Members, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of the Contracting Members (or the specific Contracting Member for whom prepared) and NCPA, except as may otherwise be required by applicable law.

11.2 NCPA's Books and Records. NCPA shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for L&R Member Services or expenditures and disbursements charged to a Contracting Member under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to NCPA to this Agreement.

11.3 Inspection and Audit of Records. Any records or documents that Section 12.2 of this Agreement requires NCPA to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of any Contracting Member. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), this Agreement shall be subject to the examination and audit of the State Auditor, at the request of any Contracting Member or as part of any audit of the Contracting Member, for a period of three (3) years after final

payment under the Agreement.

11.4 Confidential Information and Disclosure. During the term of this Agreement, any Party ("Disclosing Party") may disclose confidential, proprietary or trade secret information (the "Information"), to another Party ("Receiving Party"). All such Information made available in a tangible medium of expression (such as, without limitation, on paper or by means of magnetic tapes, magnetic disks or other computer media) shall be marked in a prominent location to indicate that it is the confidential, proprietary and trade secret information of Disclosing Party at the time of disclosure to Receiving Party. Receiving Party shall hold Disclosing Party's Information in confidence and shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Information. Receiving Party shall not attempt to reverse engineer or in any manner create any product or information which is similar in appearance to or based on the Information provided by Disclosing Party. Receiving Party shall not disclose Disclosing Party's Information to any person other than Receiving Party's employees, agents, contractors and subcontractors who have a need to know in connection with this Agreement.

Receiving Party's confidentiality obligations hereunder shall not apply to any portion of Disclosing Party's Information which:

- (a) Has become a matter of public knowledge other than through an act or omission of Receiving Party;
- (b) Has been made known to Receiving Party by a third party in accordance with such third party's legal rights without any restriction on disclosure;
- (c) Was in the possession of Receiving Party prior to the disclosure of such Information by Disclosing Party and was not acquired directly or indirectly from the other party or any person or entity in a relationship of trust and confidence with the other party with respect to such Information;
- (d) Receiving Party is required by law to disclose; or
- (e) Has been independently developed by Receiving Party from information not defined as "Information" in this Agreement, as evidenced by Receiving Party's written records.

Receiving Party shall return or destroy Disclosing Party's Information (including all copies thereof) to Disclosing Party promptly upon the earliest of any termination of this Agreement or the Disclosing Party's written request. Notwithstanding the foregoing, Receiving Party may retain one copy of such Information solely for archival purposes, subject to the confidentiality provisions of this Agreement. The Parties understand that each Party is a public entity and is subject to the laws (including the California Public Records Act) that may compel one Party to disclose information about the other's business.

Section 12. MISCELLANEOUS PROVISIONS

12.1 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

12.2 Venue. In the event that any Party brings any action against another arising under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer, or in the United States District Court for the Eastern District of California.

12.3 Severability. If any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, void or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable by federal or state statute or regulation, but the remaining portions of the Agreement can be enforced without failure of material consideration to any Party, then the remaining provisions shall continue in full force and effect. To that end, this Agreement is declared to be severable. Provided, however, that in the event any provision is declared to be non-severable and invalid, void or unenforceable, any Party may terminate this Agreement upon ten (10) days written notice given within five (5) days of receipt of notice of final entry of judgment.

12.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

12.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

12.6 Use of Recycled Products. NCPA shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

12.7 Conflict of Interest. NCPA shall not employ any Contracting Member official or employee in the work performed pursuant to this Agreement. No officer or employee of a Contracting Member shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

12.8 Notices. Unless this Agreement requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made shall become effective when delivered in person, or sent by registered or certified first class mail, to the persons specified below:

Northern California Power Agency:
Jane Cirrincione

Assistant General Manager of Legislative & Regulatory Affairs
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

Alameda:
Meredith Owens
Alameda Municipal Power
2000 Grand Street
PO Box H
Alameda, CA 94501
mowens@alamedamp.com

Biggs:
Marlee Mattos
465 C Street
Biggs, CA 95917
(530) 868-5493
biggsar@biggs-ca.gov

Healdsburg:
Terry Crowley
Electric Utility Director
401 Grove Street
Healdsburg, CA 95448
(707) 431-3340
tcrowley@ci.healdsburg.ca.us

Lodi:
Rob Lechner
1331 South Ham Lane
Lodi, CA 95242
(209) 333-6828
rlechner@lodielectric.com

Lompoc:
Mary Kammer
100 Civic Center Plaza
Lompoc, CA 93436
(805) 875-8299
M_KAMMER@ci.lompoc.ca.us

Plumas-Sierra:
Corby Gardner
73233 State Highway 70
Portola, CA 96122
(530) 832-4261
cgardner@psrec.coop

Truckee Donner:
Steven Poncelet
11570 Donner Pass Road
Truckee, CA 96161
(530) 587-3896
StevenPoncelet@tdpud.org

Whenever it is required, permitted, or desired in this Agreement that written notice or demand be given by any Party to any other Party, such notice or demand may be either personally served or sent by United States Mail, or facsimile. Notice shall be deemed to have been given when personally served, when deposited in the United States Mail, certified or registered with United States first class postage prepaid and properly addressed, or when transmitted by facsimile or electronic mail. Provided however, that notices delivered by facsimile or electronic mail shall only be effective if delivered during regular business hours on a Business Day, or else shall be deemed delivered on the next Business Day.

Any Party may amend its address for notice by providing written notice of the revised address to all other Parties.

12.9 Integration; Incorporation. This Agreement, including all the Exhibits attached hereto, represents the entire and integrated agreement between Contracting Member and NCPA relating to the subject matter of this Agreement, and supersedes all prior negotiations, representations, or agreements, either written or oral.

12.10 Dispute Resolution. If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Contracting Members and NCPA agree to resolve the dispute in accordance with the following:

12.10.1 Each Party shall designate a senior management or executive level representative to negotiate any dispute;

12.10.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.

12.10.3 If the issue remains unresolved after one hundred and twenty (120) days of good faith negotiations, despite having used their best efforts to do so, either Party may pursue whatever other remedies may be available to it.

12.10.4 This informal resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code § 900, *et seq.*

12.11 Other Agreements. This Agreement is not intended to modify or change any other agreement between any of the Parties, individually or collectively.

12.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

12.13 Obligations Several—Step Up Obligations; No Joint Venture.

12.13.1 The duties, obligations and liabilities of the Contracting Members are intended, in the first instance, to be several and not joint or collective. Each Contracting Member shall be individually and severally liable for its own obligations under this Agreement.

Notwithstanding the foregoing, and to protect the Members of NCPA who are not Parties to this Agreement from any exposure to costs or liability as a consequence of this Agreement, to the extent that any Contracting Member defaults in its obligations to pay its Participation Percentage of the costs of providing the L&R Member Services or other obligations under this Agreement, then the costs for each non-defaulting Contracting Member shall be automatically increased for the remaining term of this Agreement on a pro-rata basis with those of the other non-defaulting Contracting Members sufficient to satisfy such obligations of the Defaulting Contracting Member, consistent with each Participant's Participation Percentage.

12.13.2 Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability on or with regard to the Parties.

12.14 Effect of Section Headings. Section headings and subheadings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretation of text.

12.15 Authority of Signatories. The signatories hereby represent that they have been appropriately authorized to execute this Agreement on behalf of the Party for whom they sign.

12.16 Amendments. It is understood and agreed by the Parties that any NCPA Commission approved update to the then current NCPA Annual Budget rates and charges related to L&R Member Services to be performed under this Agreement is deemed an approved amendment to this Agreement. Except for the preceding, or for either designation of Authorized Representatives pursuant to Section 3.2 or persons to receive notice pursuant to section 12.8, the Parties may amend this Agreement only by a writing signed by all the Parties following each Party's receipt of written resolution/authorization from their governing bodies, which resolutions/authorizations shall be condition precedents to any amendments of this Agreement and shall be attached as Exhibits to this Agreement.

12.17 Exhibits. This Agreement includes the following exhibits which are incorporated in this Agreement by reference:

A. Scope of Services A-1 crmOrbit consultant services agreement including licensing Master Agreement and Terms of Use

B. Participation Percentages for Contracting Members

C. NCPA Summaries of Current Liability Insurance

In the event of any conflict between the provisions of this Agreement and those of any exhibit to this Agreement, the terms of this Agreement shall govern.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Northern California Power Agency

By: _____
JAMES H. POPE, General Manager

Attest:

Assistant Secretary of the Commission

Approved as to Form:

General Counsel

CONTRACTING MEMBERS:

CITY OF ALAMEDA

By: _____
Its: _____

Approved as to form:

City Attorney

CITY OF BIGGS

By: _____
Its: _____

Approved as to form:

City Attorney

CITY OF HEALDSBURG

By: _____
Its: _____

Approved as to form:

City Attorney

CITY OF LODI

By: _____
Its: _____

Approved as to form:

City Attorney

CITY OF LOMPOC

By: _____
Its: _____

Approved as to form:

City Attorney

PLUMAS-SIERRA RURAL ELECTRIC
COOPERATIVE

By: _____
Its: _____

Approved as to form:

General Counsel

TRUCKEE DONNER PUBLIC UTILITY
DISTRICT

By: _____
Its: _____

Approved as to form:

General Counsel

EXHIBIT A
Scope of L&R Member Services

NCPA shall provide the following L&R Member Services on behalf of Contracting Members:

1. NCPA will enter into a consultant services agreement ("CSA") which includes a licensing and maintenance agreement ("Master Agreement") with third party provider crmOrbit ("Contractor") on behalf of Contracting Member in substantially the form attached to the Agreement as Exhibit A-1. . Contracting Members, by approving the Agreement, approve the CSA and Master Agreement and direct NCPA to enter into them. Contracting Members agree to comply with the terms of such CSA. Costs incurred by NCPA as a consequence of entering into the CSA will be paid to NCPA by Contracting Members in proportion to their Participation Percentages as shown in Exhibit B.

In the event of any conflict or differences in scope of work between the provisions of this Exhibit A and those of Exhibits A-1 which are a part of this Exhibit A, the provisions of Exhibit A-1 (as approved by crmOrbit) shall govern.

2. In general, included in the CSA (and the Master Agreement which is a part of it) are:

During initial implementation, Contractor will configure up to twenty (20) energy efficiency incentive programs, some of which will be shared by the Contracting Members as specified below, and configure up to five (5) different business/workflow processes to be shared by the Contracting Members.

Of the initial set of twenty (20) energy efficiency incentive programs, six (6) will be template (generic) programs to be shared by the Contracting Members and the remaining fourteen (14) will be utility-specific programs with two (2) for each of the seven (7) Contracting Members (City of Alameda, City of Biggs, City of Healdsburg, City of Lodi, City of Lompoc, Plumas-Sierra REC, and Truckee Donner PUD).

Contractor will train Contracting Member Authorized Representatives to configure additional programs and create templates for program types that can be accessed by all authorized users to allow for rapid deployment of new programs with similar workflows.

Contractor will license all programs and processes to NCPA. Each Contracting Member's Authorized Representative shall be a "User" under the terms of the Master Agreement entitled to utilize the programs provided. In the event a Contracting Member desires a different or additional persons to be a User, that Contracting Member shall be responsible for any additional costs in doing so imposed by Contractor.

3. The following provides a general list of deliverables to be provided under the CSA and the ongoing license and maintenance support. NCPA is authorized to determine in its reasonable discretion and on behalf of all the Contracting Members which reports, dashboards, programs or other deliverables will be provided by crmOrbit, provided that NCPA shall consult with the Contracting Members in making such determinations:

Deliverable 1: Develop Project Plan

Contractor shall conduct an initial planning meeting with the NCPA Project Manager and representatives of the Contracting Members. During this session, Contractor will fill in a communications plan identifying key stakeholders, concerns, and communications approach. Contractor shall provide an updated midlevel project plan based upon the example provided in the RFP response document. The project plan shall incorporate key payment milestones and deliverable dates for each of the remaining thirteen (13) deliverables.

Deliverable 1 due date: This deliverable will be submitted for approval by NCPA not later than four (4) weeks after the Effective Date.

Deliverable 2: Develop Energy Efficiency Measures

Contractor will work with NCPA Project Manager and Contracting Member representatives to develop a variety of prescriptive energy efficiency measures, which permit the measurement or calculation of the amount of energy being saved. NCPA shall prepare measures and deemed savings/incentive parameters in a spreadsheet template provided by Contractor.

If requested, Contractor will also configure up to five (5) formula-based prescriptive measure types, in which users provide additional choices/inputs to generate calculated savings, and will train NCPA's Project Manager to set up additional such measures as needed by NCPA or the Contracting Members in the future. Contractor will also set up any additional or further such measures as may be requested on a time and materials basis.

Deliverable 3: Set Up General Program Parameters

Contractor shall work with NCPA Project Manager and Contracting Member Authorized Representatives to set up general program parameters for the initial Contracting Member energy efficiency incentive programs that will be deployed.

Deliverable 4: Develop Program & Measure Requirements

Contractor shall work with NCPA Project Manager and Contracting Member Authorized Representatives to enter program-level and measure-level requirements and develop survey questions to support the energy efficiency incentive programs of the Contracting Members.

Deliverable 5: Create Reports and Dashboards

Contractor will work with NCPA Project Manager and Contracting Member Authorized Representatives to create up to ten (10) reports and ten (10) dashboards for the Contracting Members' energy efficiency incentive programs. Contractor will create five (5) initial reports and five (5) initial dashboards, to be shared by the Contracting Members. Following completion of the initial reports and dashboards, Contractor will provide on-line training to Contracting Members' Authorized Representatives and to NCPA staff on how to create additional reports and dashboards. Upon completion of the on-line training, NCPA shall work with Contractor to implement five (5) additional reports and five additional dashboards to be shared by the Contracting Members.

Deliverable 6: Create Communication Templates

Contractor will work with NCPA Project Manager and Contracting Member Authorized Representatives to create up to four (4) e-mail or mail-merge communication templates in Microsoft Word to be shared by the Contracting Members. These may be used, for example, to create customer commitment letters, application acceptance/decline letters and missing items letter.

NCPA Project Manager shall complete on-line training provided by Contractor in how to create communication templates, and work with Contractor to implement two (2) of the above-mentioned communication templates, in order to facilitate NCPA self-sufficiency in such tasks.

Deliverable 7: Customer Proposal Templates

Contractor shall create one (1) example customer proposal template, for use by the Contracting Members in dealing with their utility customers. Additional customer proposal templates may be developed on a time and materials basis by Contractor upon request by a particular Contracting Member. If additional customer proposal templates are developed, only those Contracting Members who agree to share the costs will be provided the templates.

Deliverable 8: Develop Customer Data Import/Update Template

As part of implementation of the Contracting Members' energy efficiency incentive programs, Contractor shall develop a standard template, for use by all Contracting Members, for customer data import and update. Contractor shall implement up to ten (10) custom fields (as directed by NCPA) to be shared by the Contracting Members to support Contracting Member needs, and shall

also develop up to six (6) page layouts for the Contact and Account objects. To facilitate data entry efficiency. Contractor shall enable tracking of multiple addresses per customer.

Deliverable 9: Payment review and export

As part of implementation of the Contracting Members' energy efficiency incentive programs, Contractor shall develop a standard template for payment file export/import as described below. Individual Contracting Members shall use this format or may request that additional templates be developed on a time and materials basis by Contractor for those Contracting Members requesting it, at the cost of those requesting Contracting Members.

- Incentive payments shall be processed through the Contracting Member financial systems.
- Users may view a list of Project records (or proxy Work Order records) which are ready for payment, based on stage or other filter criteria. User may assign a Batch number (text) to one or more of these records in the list to initiate the payment process and update the payment status. As a best practice, the batch number may contain the date when the batch was generated. A workflow rule may be used to automatically update the Stage (status) or the associated Project or Work Order record.
- Users will print or export these records through a standard report which shall be created for this purpose, and which may be exported as an Excel or CSV file. Typically, this payment report will include the Project and/or WorkOrder unique identifier, the customer Account number, batch number, payment amount, Payee name and details, and payment address.
- Payments will be made at a Project or Work Order level, and shall consolidate incentives for the applicable retrofits.

Allowed users may import data from a payment results file. This file will consist of record IDs for the associated project and/or Work Order, along with additional payment details (e.g., payment ID, check #, check date, amount) to substantiate that payment has been made. A workflow rule may be set up to update the Stage (status) of the associated Project or Work Order records (e.g., "Payment Sent").

Deliverable 10: Address User Profiles and Security Issues

Contractor will work with NCPA and Contracting Members to identify user profiles, territories and roles (as necessary) and permissions to meet security requirements, and shall configure the energyOrbit™ solution to reflect this design. In particular, Contractor shall establish a Territory/Role structure to ensure that Contracting Members can see their own information (but not those of other Contracting Members), and to allow NCPA authorized individuals to access consolidated information from all Contracting Members.

As part of administrator training referenced above, Contractor shall introduce NCPA's system administrator to the fundamentals of User Profile administration and system administrators are encouraged to complete the available on-line tutorials on this topic provided by Salesforce.com. NCPA's system administrator, and other users with a System Administrator Profile, may control user IDs, activate/inactivate users, and reset user passwords. Users may also reset their own passwords after answering security questions, and a new one-time password will be sent to their specified user email address. NCPA may specify password strength settings, and password expiration policies. Each participating Member shall maintain separate and secure program information within the database. Contracting Members will not have access to each other's data.

Deliverable 11: Installation and Deployment

Contractor shall perform an Initial Installation of the energyOrbit™ solution, following establishment of NCPA's Force.com accounts. License fees for use of the energyOrbit™ solution shall commence following this Initial Installation.

Contractor shall develop and test additions and extensions to the core energyOrbit™ solution in a separate development and test environment. Throughout the Project, Contractor may deploy this new functionality to the NCPA production environment. Contractor shall endeavor to provide 24-hour advance notice of these updates, which shall typically be scheduled for Fridays. Contractor shall notify NCPA Project Manager of any such updates, including where practical, a short summary of changes. However, in some instances, emergency maintenance may require installation with less notice.

Deliverable 12: Develop Custom Functionality

Contractor shall develop Energy and Environmental Economics (E3) compliance reporting, consistent with model provided in RFP. This may include custom-programming, and may not be modifiable without assistance of Contractor in the future.

Contractor will develop water program tracking fields, supporting programs for Contracting Members that have water savings, based on specifications and guidance from the City of Roseville, if available. This effort will follow the same structure as other programs for energy savings, and shall be implemented by adding additional fields to track water quantities saved as part of measure, work order and project totals.

This deliverable will be provided at no additional cost, but may follow deployment of other programs for the City of Roseville as a new phase of work.

Deliverable 13: Provide Training

Contractor will prepare and deliver two 2-hour "train-the-trainer" sessions to NCPA staff, which may be delivered via web, as well as functional training on modules along the way.

Contractor will provide an onsite group training with all Contracting Member leads, and the following:

- Follow up webinar-based two (2) hour refresher training with individual utility leads
- Two (2) hour webinar Training for Each Contracting Member Utility as part of the program pilot deployment
- Approximately six (6) hours of formal system administrator trainings for NCPA technical personnel, covering key topics of interest, including custom object structure, customization, reporting, profiles and security or similar matters.

Contractor will prepare training materials, as well as a mid-level "cookbook" (estimated to consist of approximately thirty (30) pages), to describe key activities for setting up a program, starting a project, entering retrofits/measures, and documenting key workflow and approval processes.

Contractor will invite NCPA Project Manager to watch (via web meetings) or participate in certain configuration activities to provide on-the-job training in use and maintenance of the energyOrbit™ solution. NCPA will then provide supporting training of Contracting Member personnel consisting of a reasonable number of hours of group training, not to exceed ten (10) hours.

Contractor will prepare a set of frequently asked questions and solution for the Tier 1 support desk, and provide an additional two (2) hours of remote help desk training in basic support.

Deliverable 14: Ongoing License and Maintenance Fees

Contractor agrees to provide all necessary software licenses, and technical support as part of the license and maintenance fees. The primary purpose of this deliverable is to address problems, potential "bugs" and advanced capability questions related to energyOrbit™. To that end, the following level of support will be provided:

- Best efforts will be made to respond to specific requests within one (1) business day, including an estimate for problem resolution. It is recognized that some items may require more than one business day to resolve.
- Ability for Contracting Members to submit support requests electronically twenty-four (24) hours per day, seven (7) days per week, and speak with live staff during standard business hours (9am-6pm Central Time, excluding weekend and holidays). Contracting Members' inquiries will first be reviewed by NCPA, which will provide Tier 1 support. NCPA will prioritize and escalate such inquiries to Contractor for Tier 2 support as needed, in NCPA's discretion and subject to the limits noted below.
- General product upgrades, those general enhancements to the energyOrbit™ system which are offered at no additional cost to customers, will be provided to NCPA and the Contracting Members during the term of this Agreement. It is understood that some new

functions may require additional configuration in order to take advantage of the capabilities, which configuration shall be provided by Contractor.

- Up to five (5) priority bug fixes per month – where energyOrbit™ fails to operate according to agreed upon specifications in a way which interferes with the ability of a Contracting Member to enter and process incentives.
- Up to forty (40) technical support requests during the first thirty (30) days that the product is operational.
- Up to ten (10) additional technical support requests incidents per month after the first month, to provide Contracting Members additional help or support (for example, creating a new program workflow, or guidance to create a special type of report).
- Monthly report summaries of case activities, along with a summary of the resolution will be provided by Contractor to NCPA each month during the term of the Agreement, by the tenth (10th) day of the following month.

Other Considerations

The following assumptions will be considered based on the scope of the project and deliverables identified above. Any changes to these assumptions may result in a scope adjustment to fees and/or implementation timeline.

- NCPA Project Manager will coordinate input from Contracting Members and serve as an authorized approver for deliverables and decisions related to system setup and configuration.
- NCPA will be responsible for providing training to Contracting Members beyond the initial deployment identified above.
- NCPA and Contracting Members will be responsible for preparing import data according to templates provided by Contractor, and will be responsible for the quality of such provided information.
- Contractor will not be importing historic project data as part of this scope of work. Individual utilities may arrange to import historic data under separate arrangement.
- NCPA Project Manager will provide content for efficiency measures. Contractor will provide a template for preparing the initial list of measures, which will be imported into energyOrbit™.
- Contractor will import Contracting Member specific data extracted from current tracking spreadsheets and systems, to populate the templates designed in conjunction with Contractor's work under this agreement.
- energyOrbit™ will only be used to administer and support programs for NCPA and Contracting Members. It may not be licensed or operated as a service bureau for other entities, including affiliates of either NCPA or Contracting Members.

Exhibit A-1
FORM OF CONSULTING SERVICES AGREEMENT BETWEEN NCPA AND CRMORBIT, INC.

CONSULTING SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
crmORBIT, INC. FOR ENERGY EFFICIENCY DATABASE PROGRAM SERVICES,
INCLUDING LICENSE AND MAINTENANCE SERVICES

This agreement for consulting services ("Agreement") is made by and between the NORTHERN CALIFORNIA POWER AGENCY, a public joint powers agency with offices located at 651 Commerce Drive, Roseville, CA, 95678-6420 ("Agency") and crmOrbit a California Corporation with offices located at 2693 Blucher Valley Road, Sebastopol, CA 94572 ("Consultant") (together sometimes referred to as the "Parties") as of _____, 2012, (the "Effective Date") in Roseville, California.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to Agency the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In addition, Consultant shall provide to Agency the software licensing and maintenance and support services specified in the licensing Master Agreement and Terms of Use attached as Exhibit A-1. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A or A-1, this Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2017, when Consultant completes the work described in Exhibit A and A-1, unless the term of the Agreement is otherwise terminated or modified, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the Agency's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a professional manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from Agency of such desire of Agency, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.
- 1.5 **Contracting Members and Member Services Agreement.** Consultant acknowledges that Agency is undertaking this Agreement on behalf of certain of its members, the cities of Alameda, Biggs, Healdsburg, Lodi, and Lompoc; the Plumas-Sierra Rural Electric Cooperative; and the Truckee Donner Public Utility District (jointly the "Contracting Members"), pursuant to an agreement between the Contracting Members and the Agency (the "Member Services Agreement"). Pursuant to the Member Services Agreement, which Consultant has reviewed, and this Agreement, Consultant will be responsible for directly interfacing with representatives of the Contracting Members in addition to those of the Agency.

The Contracting Members are express third party beneficiaries of this Agreement, and are

permitted Users of the software licenses granted hereby consistent with the terms of this Agreement.

Section 2. COMPENSATION. Agency hereby agrees to pay Consultant an amount NOT TO EXCEED FOUR HUNDRED THIRTY-EIGHT THOUSAND EIGHT HUNDRED SEVENTY-ONE DOLLARS AND SIXTY-THREE CENTS (\$438,871.63) for or all work set forth in Exhibit A and Exhibit A-1, pursuant to the Consultant's fee schedule which is attached hereto and incorporated as Exhibit B and all reimbursable expenses incurred in performing the work. In the event of a conflict between this Agreement and Consultant's proposal regarding the amount of compensation, this Agreement shall prevail. Agency shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from Agency to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to Agency in the manner specified herein. Except as specifically authorized by Agency, Consultant shall not bill Agency for duplicate services performed by more than one person.

Consultant and Agency acknowledge and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subConsultants of Consultant. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subConsultants may be eligible. Agency therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task or Deliverable Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion of each Deliverable identified in the Scope of Work;
- At Agency's option, for each work item in each Deliverable, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The Consultant's signature.

Invoices shall be sent to:

Northern California Power Agency
651 Commerce Drive
Roseville, California 95678
Attn: Accounts Payable

2.2 **Monthly Payment.** Agency shall make payments according to the schedule outlined in Table 1 of Exhibit B, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 **Final Payment.** Agency shall make the final payment listed in Table 1 of Exhibit B (30) days after submittal to Agency of a final invoice, if all services required have been satisfactorily performed.

2.4 **Total Payment.** Agency shall pay for the services to be rendered by Consultant pursuant to this Agreement. Agency shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. Agency shall make no payment

for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.5 **Fees.** Fees for work performed by Consultant shall not exceed the amounts shown on the following fee schedule attached hereto as Exhibit B.
- 2.6 **Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B. Expenses not listed in Exhibit B are not chargeable to Agency. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 **Payment upon Termination.** In the event that the Agency or Consultant terminates this Agreement, the Agency shall compensate the Consultant as provided in Section 9 of Exhibit A-1.
- 2.9 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance listed below for the period covered by the agreement.

- 4.1 **Workers' Compensation.** If Consultant employs any person, Consultant shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident.
- 4.2 **Commercial General and Automobile Liability Insurance.**
 - 4.2.1 **Commercial General Insurance.** Consultant shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action for bodily injury, death, personal injury and property damage which may arise out of the operations of the consultant. The policy shall provide a minimum limit of \$1,000,000 per occurrence/\$2,000,000 aggregate.
 - 4.2.2 **Automobile Liability.** Consultant shall maintain automobile liability insurance for the term of this Agreement covering any loss of liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Consultant, on or off Agency premises. The policy shall provide a minimum limit of \$1,000,000 per each accident. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.
 - 4.2.3 **General Liability/Umbrella Insurance.** The coverage amounts set forth above may be

met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

4.3 Professional Liability Insurance. None required.

4.4 All Policies Requirements.

4.4.1 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall, at the sole option of the Agency, provide Agency with (1) a Certification of Insurance that demonstrates compliance with all applicable insurance provisions contained herein; (2) policy endorsements to the general liability policy adding the Northern California Power Agency as an Additional Insured and declaring such insurance primary in regard to work performed pursuant to this Agreement; or (3) upon request by the Agency, complete copies of all policies and/or complete copies of all endorsements that demonstrate compliance with this Section 4.

4.4.2 Notice of Reduction in or Cancellation of Coverage. An endorsement must be attached to all insurance obtained in accordance with this Agreement stating that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Agency. Consultant shall also provide thirty (30) days' prior notice to the Agency by certified mail of any impending reduction in the limits or coverage of any insurance policies that form a part of this agreement.

4.5 Waiver of Subrogation. Consultant agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Consultant, its employees, agents and subConsultants.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

5.1 Consultant shall to the fullest extent allowed by law, with respect to all services performed in connection with this Agreement, indemnify, defend and hold harmless the Agency and its officials, commissioners, officers, employees, agents and volunteers, including the Contracting Members and their officials, officers, employees, agents, and volunteers, from and against any and all claims that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the Consultant. Consultant will bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly ("Liabilities"). Such obligations to defend, hold harmless and indemnify the Agency and Contracting Members shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the Agency or the Contracting Members. The duty to defend and indemnify expressly extends to any claim of infringement upon copyright or patent relating to the software provided pursuant to this Agreement.

The duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Agency of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subConsultant of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of Agency, Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subConsultants, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency.

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Consultant.** At all times during the term of this Agreement, Consultant shall be an independent Consultant and shall not be an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise Agency shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subConsultants providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant Not Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subConsultants shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subConsultants shall comply with all applicable rules and regulations to which Agency is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and any subConsultants have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions. Consultant represents and warrants to Agency that Consultant and its employees, agents, any subConsultants shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subConsultants shall obtain and maintain during the term of this Agreement valid Business Licenses from Agency. Consultant represents and warrants to Agency that Consultant has the right to license all the software being provided to Agency pursuant to this Agreement.

- 7.5 **Nondiscrimination and Equal Opportunity.** In compliance with federal, state and local laws, Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subConsultant, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION

- 8.1 **Termination** (Reserved) .

- 8.2 **Modification.** The Parties may, by mutual written agreement, extend or shorten the end date of this Agreement beyond that provided for in Subsection 1.1. Any such modification to this Agreement, including an adjustment of compensation or reimbursement of costs beyond the amount specified in Section 2 herein, shall be specified in a signed amendment or exhibit to the Agreement.

In the event that one or more, but less than all, of the Contracting Members terminates the Member Services Agreement, and such termination reduces funding available to the Agency for this Agreement, the Parties agree to meet and confer in good faith with respect to modification of the scope of work and price to accommodate such withdrawal.

- 8.3 **Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.

- 8.4 **Assignment and Subcontracting.** Agency and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique professional competence, experience, and specialized professional knowledge. Moreover, a substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Agency. Notwithstanding the foregoing either party may assign this Agreement without consent of the other party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets which does not involve a direct competitor of the other party. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subConsultants noted in the proposal, without prior written approval of the Agency. Where written approval is granted by the Agency, Consultant shall supervise all work subcontracted by Consultant in performing the services; shall be responsible for all work performed by a subConsultant as if Consultant itself had performed such work; the subcontracting of any work to subConsultants shall not relieve Consultant from any of its obligations under this Agreement with respect to the services; and Consultant is obligated to ensure that any and all subConsultants performing any services shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.

- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this

Agreement allocating liability between Agency and Consultant shall survive the termination of this Agreement.

- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, and such breach is not cured within 45 days of written notice, Agency's remedies shall include, but not be limited to, the following:
- 8.6.1 Terminate the Agreement;
 - 8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - 8.6.3 Consultant to provide an export of data entered into the energyOrbit platform to Agency at Consultant's expense;
 - 8.6.4 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
 - 8.6.4 Obtain a refund of any pre-paid amounts for services applicable since the date of breach.
 - 8.6.5 Total financial remedies for breach by Consultant shall not exceed the amounts actually paid to Consultant for the project to date, provided however, that such limitation shall not apply to claims related to either violation of copyright or negligent disclosure of personally identifying customer information.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** Subject to the terms of the licensing agreement entered into concurrently herewith by the Parties (the "Master Use Agreement") all reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Consultant hereby agrees to deliver those documents to the Agency upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the Agency and are not necessarily suitable for any future or other use. Agency and Consultant agree that, until final approval by Agency, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.
- Consultant agrees that the authorized representatives of the Contracting Members shall be entitled to recognition as Users under the Master Agreement.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any

time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.

- 9.4 **Confidential Information and Disclosure.** During the term of this Agreement, either party or the Contracting Members (the "Disclosing Party") may disclose confidential, proprietary or trade secret information (the "Information"), to the other party (the "Receiving Party"). All such Information made available in a tangible medium of expression (such as, without limitation, on paper or by means of magnetic tapes, magnetic disks or other computer media) shall be marked in a prominent location to indicate that it is the confidential, proprietary and trade secret information of the Disclosing Party at the time of disclosure to the Receiving Party. The Receiving Party shall hold the Disclosing Party's Information in confidence and shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Information. The Receiving Party shall not attempt to reverse engineer or in any manner create any product or information which is similar in appearance to or based on the Information provided by the Disclosing Party. The Receiving Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, Consultants and subConsultants who have a need to know in connection with this Agreement.

The Receiving Party's confidentiality obligations hereunder shall not apply to any portion of the Disclosing Party's Information which:

- (a) Has become a matter of public knowledge other than through an act or omission of the Receiving Party;
- (b) Has been made known to the Receiving Party by a third party in accordance with such third party's legal rights without any restriction on disclosure;
- (c) Was in the possession of the Receiving Party prior to the disclosure of such Information by the Disclosing Party and was not acquired directly or indirectly from the other party or any person or entity in a relationship of trust and confidence with the other party with respect to such Information;
- (d) The Receiving Party is required by law to disclose; or
- (e) Has been independently developed by the Receiving Party from information not defined as "Information" in this Agreement, as evidenced by Receiving Party's written records.

The Receiving Party shall return or destroy the Disclosing Party's Information (including all copies thereof) to the Disclosing Party promptly upon the earliest of any termination of this Agreement or the Disclosing Party's written request. Notwithstanding the foregoing, the Receiving Party may retain one copy of such Information solely for archival purposes, subject to the confidentiality provisions of this Agreement. Consultant understands that NCPA is a public agency and is subject to the laws that may compel it to disclose information about Consultant's business.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in

the County of Placer or in the United States District Court for the Eastern District of California. Enforcement of this Agreement is subject to alternative dispute resolution provisions in Section 10.13 of the Agreement and arbitration provisions in Section 15 of Exhibit A-1.

- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 **Use of Recycled Products.** Consultant shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the Agency. If Consultant was an employee, agent, appointee, or official of the Agency in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the Agency for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Jane Cirrincione, Assistant General Manager of Legislative & Regulatory Affairs her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.
- 10.10 **Notices.** Any written notice to Consultant shall be sent to:

Seth Golub
Vice President Professional Services
2693 Blucher Valley Road
Sebastopol, CA 95472

Any written notice to Agency shall be sent to:

James H. Pope
General Manager
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

With a copy to:

Michael F. Dean
General Counsel
Northern California Power Agency
Meyers Nave
555 Capitol Mall, Suite 1200
Sacramento, CA 95814

- 10.11 **Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 **Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein. In the event of any conflict between the provisions of any exhibit and this Agreement, the provisions of this Agreement shall govern.
- 10.13 **Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Consultant agree to resolve the dispute in accordance with the following:
- 10.13.1 Each party shall designate a senior management or executive level representative to negotiate any dispute;
- 10.13.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 10.13.3 If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 10.13.4 The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 10.13.5 The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.

10.13.6 The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code § 900, *et. seq.*

10.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the date signed by the Agency.

NORTHERN CALIFORNIA POWER AGENCY

crmOrbit, Inc.

Date _____

Date _____

JAMES H. POPE, General Manager

SETH GOLUB, Vice President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

General Counsel

**CONSULTING SERVICES AGREEMENT EXHIBIT A
SCOPE OF SERVICES**

1. Background

This consultant services agreement ("CSA") between NCPA and crmOrbit ("Consultant") includes a licensing and maintenance agreement ("Master Agreement") between the same two parties attached as Exhibit A-1. NCPA is also concurrently entering into a Member Services Agreement on behalf of seven (7) of its member agencies who will receive the energy efficiency database services provided by Consultant ("Contracting Members") and who will be permitted Users under the terms of the license.

This Exhibit A consists of this general description of the Scope of Services, NCPA's Request for Proposals for Demand Side Management Database dated July 25, 2011 ("RFP"), and Consultant's Response to Request for Proposals ("Response") both of which are incorporated herein by this reference (but are not attached) as well as the Master Agreement in Exhibit A-1. Each of the documents shall be read as a part of a whole, integrated Scope of Services. However, in the event of any conflict, this Exhibit shall govern over the Master Agreement, the RFP and Response, and the Response shall govern over the RFP.

2. Scope of Work in General

During initial implementation, Consultant will configure up to twenty (20) energy efficiency incentive programs, some of which will be shared by the Contracting Members as specified below, and configure up to five (5) different business/workflow processes to be shared by the Contracting Members.

Of the initial set of twenty (20) energy efficiency incentive programs, six (6) will be template (generic) programs to be shared by the Contracting Members and the remaining fourteen (14) will be utility-specific programs with two (2) for each of the seven (7) Contracting Members (City of Alameda, City of Biggs, City of Healdsburg, City of Lodi, City of Lompoc, Plumas-Sierra REC, and Truckee Donner PUD).

Consultant will train Contracting Member Authorized Representatives to configure additional programs and create templates for program types that can be accessed by all authorized users to allow for rapid deployment of new programs with similar workflows.

Consultant will license all programs and processes to NCPA under the terms of the Master Agreement. Each Contracting Member's Authorized Representative, or other designated staff of the Contracting Member, shall be a "User" under the terms of the Master Agreement entitled to utilize the programs and databases provided.

3. The following provides a general list of deliverables to be provided:

Deliverable 1: Develop Project Plan

Consultant shall conduct an initial planning meeting with the NCPA Project Manager and representatives of the Contracting Members. During this session, Consultant will fill in a communications plan identifying key stakeholders, concerns, and communications approach. Consultant shall provide an updated midlevel project plan based upon the example provided in the RFP response document. The project plan shall incorporate reasonable key payment milestones and deliverable dates for each of the remaining thirteen (13) deliverables as mutually agreed upon by NCPA and Consultant.

Deliverable 1 due date: This deliverable will be submitted for approval to NCPA not later than four (4) weeks from the Effective Date.

Deliverable 2: Develop Energy Efficiency Measures

Consultant will work with NCPA Project Manager and Contracting Member representatives to develop a variety of prescriptive energy efficiency measures, which permit the measurement or calculation of the amount of energy being saved. NCPA shall prepare measures and deemed savings/incentive parameters in a spreadsheet template provided by Consultant.

If needed, Consultant will also configure up to five (5) formula-based prescriptive measure types, in which users provide additional choices/inputs to generate calculated savings, and train NCPA's Project Manager to set up additional such measures as may be needed in the future. Consultant will also set up additional such measures as requested by NCPA on a time and materials basis.

Deliverable 3: Set Up General Program Parameters

Consultant shall work with NCPA Project Manager and Contracting Member Authorized Representatives to set up general program parameters for the initial Contracting Member energy efficiency incentive programs that will be deployed.

Deliverable 4: Develop Program & Measure Requirements

Consultant shall work with NCPA Project Manager and Contracting Member Authorized Representatives to enter program-level and measure-level requirements and develop survey questions to support the energy efficiency incentive programs of the Contracting Members.

Deliverable 5: Create Reports and Dashboards

Consultant will work with NCPA Project Manager and Contracting Member Authorized Representatives to create up to ten (10) reports and ten (10) dashboards for the Contracting Members' energy efficiency incentive programs. Consultant will create five (5) initial reports and five (5) initial dashboards, to be shared by the Contracting Members. Following completion of the initial reports and dashboards, Consultant will provide on-line training to Contracting Members' Authorized Representatives and to NCPA staff on how to create additional reports and dashboards. Upon completion of the on-line training, NCPA shall work with Consultant to implement five (5) additional reports and five additional dashboards to be shared by the Contracting Members.

Deliverable 6: Create Communication Templates

Consultant will work with NCPA Project Manager and Contracting Member Authorized Representatives to create up to four (4) e-mail or mail-merge communication templates in Microsoft Word to be shared by the Contracting Members. These may be used, for example, to create customer commitment letters, application acceptance/decline letters and missing items letter.

NCPA Project Manager shall complete on-line training provided by Consultant in how to create communication templates, and work with Consultant to implement two (2) of the above-mentioned communication templates, in order to facilitate NCPA self-sufficiency in such tasks.

Deliverable 7: Customer Proposal Templates

Consultant shall create one (1) example customer proposal template, for use by the Contracting Members in dealing with their utility customers. Additional customer proposal templates may be developed on a time and materials basis by Consultant upon request by a particular Contracting Member. If additional customer proposal templates are developed, only those Contracting Members who agree to share the costs will be provided the templates.

Deliverable 8: Develop Customer Data Import/Update Template

As part of implementation of the Contracting Members' energy efficiency incentive programs, Consultant shall develop a standard template, for use by all Contracting Members, for customer data import and update. Consultant shall implement up to ten (10) custom fields (as directed by NCPA) to be shared by the Contracting Members to support Contracting Member needs, and shall also develop up to six (6) page layouts for the Contact and Account objects. To facilitate data entry efficiency. Consultant shall enable tracking of multiple addresses per customer.

Deliverable 9: Payment review and export

As part of implementation of the Contracting Members' energy efficiency incentive programs, Consultant shall develop a standard template for payment file export/import as described below. Individual Contracting Members shall use this format or may request that additional templates be developed on a time and materials basis by Consultant for those Contracting Members requesting it, at the cost of those requesting Contracting Members.

- Incentive payments shall be processed through the Contracting Members' financial systems.
- Users may view a list of Project records (or proxy Work Order records) which are ready for payment, based on stage or other filter criteria. Users may assign a Batch number (text) to one or more of these records in the list to initiate the payment process and update the payment status. As a best practice, the batch number may contain the date when the batch was generated. A workflow rule may be used to automatically update the Stage (status) or the associated Project or Work Order record.
- Users may print or export these records through a standard report which shall be created for this purpose, and which may be exported as an Excel or CSV file. Typically, this payment report will include the Project and/or Work Order unique identifier, the customer Account number, batch number, payment amount, Payee name and details, and payment address.
- Payments will be made at a Project or Work Order level, and shall consolidate incentives for the applicable retrofits.

Allowed users may import data from a payment results file. This file will consist of record IDs for the associated project and/or Work Order, along with additional payment details (e.g., payment ID, check #, check date, amount) to substantiate that payment has been made. A workflow rule may be set up to update the Stage (status) of the associated Project or Work Order records (e.g., "Payment Sent").

Deliverable 10: Address User Profiles and Security Issues

Consultant will work with NCPA and Contracting Members to identify user profiles, territories and roles (as necessary) and permissions to meet security requirements, and shall configure the energyOrbit™ solution to reflect this design. In particular, Consultant shall establish a Territory/Role structure to ensure that Contracting Members can see their own information (but not those of other Contracting Members), and to allow NCPA authorized individuals to access consolidated information from all Contracting Members.

As part of administrator training referenced above, Consultant shall introduce NCPA's system administrator to the fundamentals of User Profile administration and system administrators are encouraged to complete the available on-line tutorials on this topic provided by Salesforce.com. NCPA's system administrator, and other users with a System Administrator Profile, may control user IDs, activate/inactivate users, and reset user passwords. Users may also reset their own passwords after answering security questions, and a new one-time password will be sent to their

specified user email address. NCPA may specify password strength settings, and password expiration policies. Each participating Member shall maintain separate and secure program information within the database. Contracting Members will not have access to each other's data.

Deliverable 11: Installation and Deployment

Consultant shall perform an Initial Installation of the energyOrbit™ solution, following establishment of NCPA's Force.com accounts. License fees for use of the energyOrbit™ solution shall commence following this Initial Installation.

Consultant shall develop and test additions and extensions to the core energyOrbit™ solution in a separate development and test environment. Throughout the Project, Consultant may deploy this new functionality to the NCPA production environment. Consultant shall endeavor to provide 24-hour advance notice of these updates, which shall typically be scheduled for Fridays. Consultant shall notify NCPA Project Manager of any such updates, including where practical, a short summary of changes. However, in some instances, emergency maintenance may require installation with less notice.

Deliverable 12: Develop Custom Functionality

Consultant shall develop Energy and Environmental Economics (E3) compliance reporting, consistent with model provided in RFP. This may include custom-programming, and may not be modifiable without assistance of Consultant in the future.

Consultant will develop water program tracking fields, supporting programs for Contracting Members that have water savings, based on specifications and guidance from the City of Roseville, if available. This effort will follow the same structure as other programs for energy savings, and shall be implemented by adding additional fields to track water quantities saved as part of measure, work order and project totals.

This deliverable will be provided at no additional cost, but may follow deployment of other programs for the City of Roseville as a new phase of work.

Deliverable 13: Provide Training

Consultant will prepare and deliver two 2-hour "train-the-trainer" sessions to NCPA staff which may be delivered via web, as well as functional training on modules during all stages of the project.

Consultant will provide an onsite group training with all Contracting Member Authorized Representatives, and additionally provide the following:

- Follow up webinar-based two (2) hour refresher training with individual Contracting Member representatives.

- Two (2) hour webinar Training for each Contracting Member as part of the program pilot deployment .
- Approximately six (6) hours of formal system administrator trainings for NCPA technical personnel, covering key topics of interest, including custom object structure, customization, reporting, profiles and security or similar matters.

Consultant will prepare training materials, as well as a mid-level "cookbook" (estimated to consist of approximately thirty (30) pages), to describe key activities for setting up a program, starting a project, entering retrofits/measures, and documenting key workflow and approval processes.

Consultant will invite NCPA Project Manager to watch (via web meetings) or participate in certain configuration activities to provide on-the-job training in use and maintenance of the energyOrbit™ solution and provide training sufficient to permit NCPA to then provide supporting training of Contracting Member personnel.

Consultant will prepare a set of frequently asked questions and solution for the Tier 1 support desk, and provide an additional two (2) hours of remote help desk training in basic support.

Deliverable 14: Ongoing License and Maintenance Fees

Consultant agrees to provide technical support as part of the license and maintenance fees. The primary purpose of this deliverable is to address problems, potential "bugs" and advanced capability questions related to energyOrbit™. To that end, the following level of support will be provided:

- Best efforts will be made to respond to specific requests within one (1) business day, including an estimate for problem resolution. It is recognized that some items may require more than one business day to resolve.
- Ability for Contracting Members to submit support requests electronically twenty-four (24) hours per day, seven (7) days per week, and speak with live staff during standard business hours (9am-6pm Central Time, excluding weekend and holidays). Contracting Member inquiries will be initially reviewed by NCPA which will provide Tier 1 support. NCPA will prioritize Contracting Member inquiries and refer them to Consultant for Tier 2 support, in NCPA's discretion and subject to the limits noted below.
- General product upgrades, those general enhancements to the energyOrbit™ system which are offered at no additional cost to customers, will be provided to NCPA and the Contracting Members during the term of this Agreement. It is understood that some new functions may require additional configuration in order to take advantage of the capabilities, which configuration shall be provided by Consultant.
- Up to five (5) priority bug fixes per month – where energyOrbit™ fails to operate according to agreed upon specifications in a way which interferes with the ability of a Contracting Member to enter and process incentives.

- Up to forty (40) technical support requests during the first thirty (30) days that the product is operational.
- Up to ten (10) additional technical support requests incidents per month after the first month, to provide Contracting Members additional help or support (for example, creating a new program workflow, or guidance to create a special type of report).
- Monthly report summaries of case activities, along with a summary of the resolution will be provided by Consultant to NCPA each month during the term of the Agreement, by the tenth (10th) day of the following month.

Other Considerations

The following assumptions will be considered based on the scope of the project and deliverables identified above. Any changes to these assumptions may result in a scope adjustment to fees and/or implementation timeline.

- NCPA Project Manager will coordinate input from Contracting Members and serve as an authorized approver for deliverables and decisions related to system setup and configuration.
- NCPA will be responsible for providing training to Contracting Members beyond the initial deployment identified above.
- NCPA and Contracting Members will be responsible for preparing import data according to templates provided by Consultant, and will be responsible for the quality of such provided information.
- Consultant will not be importing historic project data as part of this scope of work. Individual utilities may arrange to import historic data under separate arrangement.
- NCPA Project Manager will provide content for efficiency measures. Consultant will provide a template for preparing the initial list of measures, which will be imported into energyOrbit™.
- Consultant will import Contracting Member specific data extracted from current tracking spreadsheets and systems, to populate the templates designed in conjunction with Consultant's work under this agreement.
- energyOrbit™ will only be used to administer and support programs for NCPA and Contracting Members. It may not be licensed or operated as a service bureau for other entities, including affiliates of either NCPA or Contracting Members.

END OF EXHIBIT A

**CONSULTING SERVICES AGREEMENT
EXHIBIT B
COMPENSATION SCHEDULE AND HOURLY FEES**

Compensation for all tasks, including hourly fees and expenses, amount shall **NOT TO EXCEED FOUR HUNDRED THIRTY-EIGHT THOUSAND EIGHT HUNDRED SEVENTY-ONE DOLLARS AND SIXTY-THREE CENTS (\$438,871.63)**. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

Item	One-time Implementation Costs	Annual Recurring Costs	Comments
Consulting and implementation	\$83,145.27		Fixed fee
energyOrbit™ license, support/maintenance fees		\$69,045.27	Please see below for details, up to 45 users
Customer Web Application Portal		\$2,100	Non-licensed users can enter applications on line. Up to 7,000 applications per year, not to exceed 7,000 active logins.
Totals	\$83,145.27	\$71,145.27	

Pricing Notes:

- Additional consulting beyond the scope of this agreement provided specifically to NCPA member utilities will be provided at needed for in blocks of 30 hours at a \$100 per hour, under a separate agreement between Member and Contractor.
- License Fees shall commence upon delivery by Contractor of the included deliverables for the NCPA initial template programs.
- Any incremental time and materials charges for design of additional scope items shall be billed within 10 days of the end of the month in which the time was incurred, and payment shall be due and payable within 30 days of receipt of invoice.
- NCPA shall reimburse Contractor for actual, reasonable travel-related expenses for travel approved in advance by NCPA (at coach rates and IRS mileage reimbursement rates), as well as approved third-party software expenses as might be required. All reimbursement shall be due and payable within 15 days of submission of an itemized expense report with attached receipts. NCPA's Project Manager may approve, in writing, additional travel expenses beyond the "not to exceed" amount in an amount not to exceed fifteen thousand (\$15,000) dollars."
- NCPA shall not be responsible for Contractor travel to and between Contractor offices, office space, communications and incidental expenses of Contractor including telephone, facsimile, and photocopying charges.
- Payments shall be due at the times and in the amounts shown on Table 1 which is attached to this Exhibit.

NOTE: As a public agency, NCPA shall not reimburse Consultant for costs in excess of those permitted by the Internal Revenue Service.

Table 1
Payment Schedule

Table 1.			
Payable/Due date	Category	Amount	Description
Payment #1: Project commencement (Implementation Fee – 30%) (Initial License Fee) Date: 30 days after contract begins	Professional Services energyOrbit licenses/hosting	\$29,943.58	Project Implementation License fees for development purposes
Payment #2: (20% of implementation) Date: 60 days after contract begins	Professional Services	\$16,629.05	Project Implementation (Configuration of NCPA pilot program)
Payment #3: (20% of implementation) Date: 90 days after contract begins	Professional Services	\$16,629.05	Project Implementation Delivery of all functional enhancements
Payment #4: (20% of implementation) Date: 120 days after contract begins	Professional Services	\$16,629.05	Project Implementation Deployment of seven member utility programs
Payment #5: (10% of implementation) Final Signoff Date: No later than 7/30/2011, or 30 days following completion of deliverables, whichever is sooner.	Professional Services	\$8,314.53	Final Sign off- training complete, etc
First Year License Fees Beginning 7/1/2012	energyOrbit licenses / hosting	\$73,000	Remaining license fees for first year (Up to 45 users)
Annual License Fees Beginning 7/1/2013		\$71,145.27	Quarterly payments, provided to Contractor each September 30, December 31, March 31, and June 30.
<p align="center"><u>Adjustments to Payment Schedule if Additional NCPA Member Utilities Join the Project</u></p> <ul style="list-style-type: none"> • One time Implementation fee- \$20,000 • Per user fees = \$500/user/year. \$750/admin user/year • License fees = 2% of DSM and water savings program incentive budget 			

CONSULTING SERVICES AGREEMENT
EXHIBIT A-1
crmOrbit LICENSING MASTER AGREEMENT AND TERMS OF USE

THIS MASTER AGREEMENT AND TERMS OF USE is Exhibit A-1 to the Consultant Services Agreement between Northern California Power Agency (hereinafter called "CLIENT", "Customer") and crmOrbit, Inc. ("crmOrbit") a California corporation, having an office at 2693 Blucher Valley Road, Sebastopol, CA 94572, collectively "the Parties".

These energyOrbit "EO" Terms of Use ("Terms of Use") govern the provision of the energyOrbit Application Service by crmOrbit to CLIENT. These Terms of Use, Statements of Work ("SOW") signed by the Parties, and any policies or other documents expressly incorporated by reference herein or therein are collectively referred to as the "Agreement". The Agreement shall be effective as of the date set forth below the Customer signature (the "Effective Date").

If Customer signs and returns the Agreement and/or SOW but does not complete the date of signature, crmOrbit may fill in the date of signature with the date it receives the signed SOW.

1. Definitions.

- "EO Service" means the application referred to as energyOrbit which has been developed by crmOrbit and is available to operate in conjunction with the Salesforce.com® (SFDC) CRM and/or Force.com® Platform Service as a stand-alone product. Both editions are hosted by SFDC. The EO Service also includes any EO Service documentation and any other updates, or upgrades to such EO Service which may be provided by crmOrbit from time to time in connection with this service.
- "Consultant" means an individual or entity providing services or other assistance to crmOrbit or CLIENT, as applicable.
- "Us" means crmOrbit.
- "crmOrbit Content" means the audio, video and visual information, documents, software, products and services contained in, or made available to CLIENT in the course of using the EO Service.
- "SFDC" means Salesforce.com, Inc., the third party provider of application and platform services hosting the EO service in conjunction with the SFDC Service.
- "Force.com® platform" means the infrastructure provided by Salesforce.com including but not limited to database, user interface, security controls. For the

purpose of definition of the term, "Force.com", Force.com is synonymous to SFDC Services.

- "SFDC Service" means the application or platform service being provided by SFDC with which the EO Service interoperates.
- "Start Date" means the date EO Services fees commence for the applicable organization as indicated in Addendum(s) that are executed in counterparts which, taken together, shall form one legal instrument of this Agreement.
- "User" means each CLIENT employee(s) or Consultant(s) who are (i) authorized to use the EO Service and have been supplied with Credentials by CLIENT (or by crmOrbit at CLIENT's request).
- "Additional Users" means additional users that are added to the pool of existing SFDC licensees subsequent to commencement of this Agreement.
- "Affiliated Organizations" or "Affiliates" means independent contractors, Trade Allies, Energy Services Companies (ESCOs), energy consultants, government agencies and regulatory regimes with whom CLIENT conducts business and has a need to share information tracked in the Service.
- "Client" means a utility or other agency that engages in a contractual relationship with CLIENT, Inc. for the administration, implementation and/or delivery of energy efficiency program services.

2. Service Provided.

- 2.1 License. crmOrbit grants CLIENT a license, allowing a limited number of named Users to use, administer and customize the EO Service for the sole purpose of administering, managing and tracking energy efficiency and conservation programs on behalf of its Clients according to terms specified in an attached Exhibit or Statement of Work to this Agreement. Without limiting the foregoing, CLIENT and its affiliates may not use the EO services to administer, manage and/or track other clients or energy efficiency programs except as provided for in a related SOW or Addendum to this Agreement.
- 2.2 Deployment. crmOrbit may provide professional services related to deployment of energyOrbit as specified in an applicable Addendum of Statement of Work to this Agreement.
- 2.3 Technical Support. If support is required by CLIENT, crmOrbit will provide support for the EO Service during the Term via the crmOrbit Support Services in accordance with terms specified in applicable SOW or Addendum or Service Level Agreement (SLA) between crmOrbit and CLIENT.

- 2.3.1 Unless otherwise specified in an Addendum or Statement of Work, crmOrbit will provide Tier 2 technical support with an expected 1 business day response for contracts involving payment of a Licensing Fee. Technical support requests will be tracked by a formal tracking mechanism (based on Salesforce or other online tracking system). CLIENT shall provide Tier 1 support to its users and Clients.
- 2.4 Upon support request from CLIENT, crmOrbit will make an initial determination in good faith as to whether the issue is with the EO Service or the SFDC Service. If the issue is with the SFDC Service, CLIENT agrees to contact SFDC directly for support for the SFDC Service.
- 2.5 Upgrades. crmOrbit shall from time to time in crmOrbit's discretion provide upgrades to the EO Services at no additional charge to CLIENT. These upgrades may require additional professional services to take advantage of certain new functionality, and such professional services are not included in the upgrade. As a "cloud computing" or "software-as-a-service" solution, crmOrbit may centrally implement certain patches and bug fixes on behalf of its customers.
- 2.6 CLIENT may contact crmOrbit to purchase training for the EO Service, which shall be specified in an applicable Statement of Work.
- 2.7 Subcontracting. crmOrbit retains the right to subcontract any or all of the EO Service to be performed under this Agreement to a qualified subcontractor of crmOrbit's choosing. In such event, crmOrbit shall remain obligated to CLIENT for the work subcontracted. crmOrbit shall ensure that such subcontractors shall be bound by confidentiality agreements substantially similar to those signed by crmOrbit on behalf of CLIENT. crmOrbit agrees to notify CLIENT if and when subcontractors are to be used. CLIENT reserves the right to approve the use of specific subcontractors if there is a perceived conflict of interest or specific concern about the specific subcontractor selected by crmOrbit.

Licensor shall remain responsible for obligations, services and functions performed by subcontractors to the same extent as if such obligations, services and functions were performed by Licensor's employees and for purposes of this Agreement such work shall be deemed work performed by Licensor. Licensor shall be CLIENT's sole point of contact regarding the Services, including with respect to payment.

2.8 Escrow of Source Code.

Immediately following the Acceptance of the initial and subsequently delivered Software, Licensor, at CLIENT's expense, will provide a copy of the Source Code for such initial and subsequently delivered Software to a recognized third-party escrow

agent under a duly executed escrow agreement (the "Escrow Agreement"). Throughout the term of the License, Licensors shall assure that such escrowed Source Code reflects the most current version of the Software licensed to CLIENT. Under the terms of the Escrow Agreement, CLIENT may itself or have designated third-parties audit the escrowed Source Code for compliance with the terms of this Agreement and the Escrow Agreement.

2.9 Use of Source Code.

If Licensors fail to provide support for the Software in accordance with any maintenance agreement between the Parties due to insolvency, abandonment of licensing or supporting the Software as a line of business, or otherwise, (a) CLIENT may access and use the Software's Source Code, applicable compilers, and other information and tools necessary to modify, upgrade, improve, or create derivative works from, the Source Code, either directly from Licensors or through the third-party escrow agent, as necessary for CLIENT to make continued use of the Software in its business, which access and use will otherwise be governed by the terms of this Agreement and by the Escrow Agreement, and (b) the License will be deemed to have been automatically amended to include the right to modify, and to authorize a third-party to modify on CLIENT's behalf, the Source Code as provided herein. CLIENT's use of the Source Code under the terms of this Section 2.9 shall not constitute a termination of this Agreement.

- 3. Order Process.** The initial order for the EO Service is set forth in the initial SOW and or Addendums(s) which references these Terms of Use. Orders for additional licenses will be made by mutual execution of an additional SOW and/or Addendum(s) and any such additional license will be provided access to the EO Service in accordance with terms contained in this Agreement. Any terms and conditions of any purchase orders or acknowledgements that are inconsistent with or in addition to the terms and conditions of this Agreement and an executed SOW or Addendum(s) will not apply.

4. Fees and Payment Terms.

- 4.1** CLIENT will pay crmOrbit the amounts set forth in Exhibit B of the consultant services agreement between CLIENT and crmOrbit for the EO Service or any other service specified. All payments for EO Services will be due as shown in Exhibit B of the consultant services agreement.
- 4.2** Added licenses will be subject to the following: (i) added licenses will be coterminous with the preexisting Term, (ii) or Term as specified in an Addendum to this Agreement. (iii) crmOrbit reserves the right to increase the price upon renewal, subject to negotiation by parties.
- 4.3** All payment obligations are non-cancelable and all amounts paid are nonrefundable. CLIENT is responsible for paying for all licensing ordered for the entire Term, whether

or not CLIENT is actively using the EO Service except as otherwise provided in a Statement of Work or in Section 9 – Term and Termination. A suspension of service for overdue payment will not constitute a termination of the Agreement nor will it relieve CLIENT of any of its obligations or liabilities under the Agreement. CLIENT will continue to be charged EO Service fees during any period of suspension.

- 4.4 Payment from CLIENT is due within thirty (30) days from the date of invoice, unless stated otherwise in related Addenda or Scope of Work documents. CLIENT may be charged a late fee of 1.5 % per month (or the maximum rate allowed by applicable law if it is less) on any undisputed amount not paid when due. In addition, in the event that CLIENT is delinquent in the payment of any amounts due to crmOrbit, crmOrbit may suspend access to the EO Service within 10 business days of delinquency, without advance written notice to CLIENT.
- 4.5 The fees set forth in the SOW and/or Addendum(s) do not include taxes unless stated otherwise. Unless CLIENT provides crmOrbit with a valid tax exempt certificate on or before the Effective Date of this the Agreement, CLIENT will pay, and indemnify and hold crmOrbit harmless for, all applicable sales, use, VAT, excise, import, export, property, withholding or similar taxes or duties in connection with the provision of the EO Service to CLIENT by crmOrbit (including any interest or penalties thereon resulting from CLIENT's failure to pay such taxes or other charges on a timely basis). CLIENT will notify crmOrbit in writing in the event CLIENT experiences a change in its tax exempt status during the Term.
- 4.6 CLIENT will pay the License Fees due under this Agreement and under a formula specified in an applicable SOW or Addendum. Applicable fees shall be due and payable within 30 days from the beginning of the term in which the licenses will be used unless otherwise set forth in the applicable SOW or Addendum. CLIENT shall send a report documenting the Users who will access the system along with payment. crmOrbit shall have a right to audit all relevant records related to computation of license fees due, at a reasonable agreed-to time, at its own expense, once per calendar year. Should the results of such audit indicate that crmOrbit is due additional fees in excess of five percent (5%) of the amounts indicated by CLIENT reports, CLIENT shall reimburse crmOrbit for the additional amount due along with the cost of the audit and a service charge of four percent (4%) of any additional amounts due.

5. CLIENT Obligations.

- 5.1 User Administration. The EO Service will be password-protected and only Users who have properly registered and received a login ID and password ("Credentials") will be able to access the EO Service. CLIENT represents and warrants that each User that registers under CLIENT's account is, and during the Term will be an authorized agent of CLIENT for purposes of this Agreement. CLIENT will be solely responsible for administering and monitoring the confidentiality and use of the Credentials. Upon the

termination of employment of any User and or access granted to affiliated organization, CLIENT will immediately terminate access of that individual to the EO Service. CLIENT shall: (i) notify crmOrbit promptly of any unauthorized use of any Credentials or any other suspected violation of this Agreement and (ii) not share IDs and passwords between two or more users and (iii) not impersonate another SFDC Service user or provide false identity information to gain access to or use the EO Service. This Agreement is not a sale and does not convey any rights of ownership in or related to the EO Service, the SFDC Service or the intellectual property rights owned by crmOrbit or SFDC. The salesforce.com name, the salesforce.com logo, and the product names associated with the Service are trademarks of salesforce.com or third parties, and no right or license is granted to use them.

- 5.2 Compliance with Laws. CLIENT is responsible for all activity occurring under CLIENT's User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with the use of the EO Service, including those related to data privacy, international communications and the transmission of technical or personal data.
- 5.3 Prohibited Uses. CLIENT may not modify, rent, sublease, sublicense, assign, use as a service bureau, copy, lend, adapt, translate, sell, distribute, derive works from, decompile or reverse engineer the EO Service or any crmOrbit intellectual property, except as explicitly permitted hereunder. Unless otherwise expressly set forth in an SOW and/or addendums(s), the EO Service is provided solely for the benefit of CLIENT, and not, by implication or otherwise, to any parent, subsidiary or affiliate of CLIENT. CLIENT may not permit access to the EO Service to a competitor of crmOrbit, except with crmOrbit's prior written consent. In addition, CLIENT may not access the EO Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes. CLIENT may use the EO Service only for CLIENT's business purposes. CLIENT and pre-authorized Users from organizations affiliated with the CLIENT shall not: (i) store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material in violation of third party privacy rights; (ii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iii) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (iv) attempt to gain unauthorized access to the EO Service or its related systems or networks.

6. Ownership and Confidential Information.

- 6.1 CLIENT Ownership. As between CLIENT and crmOrbit, CLIENT will retain all right, title and interest in and to any data, information or materials provided by CLIENT as well as all information processed by the EO Service regarding individual Users ("CLIENT Data"). CLIENT grants to crmOrbit a non-exclusive license to use, copy, store, modify and display the CLIENT Data solely to the extent necessary to provide

the EO Service to CLIENT. CLIENT, not crmOrbit, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all CLIENT Data, and crmOrbit shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any CLIENT Data.

6.2 crmOrbit Ownership. crmOrbit will retain all right, title and interest in and to all proprietary rights with respect to the EO Service together with any and all crmOrbit Content and other technology that enables the provision of the EO Service, any training materials, product documentation, whitepapers, or deliverables provided by crmOrbit under the Agreement, and any suggestions, ideas, enhancement requests, feedback, recommendations for modifications or improvements to the EO Service provided by CLIENT. All rights not expressly granted to CLIENT hereunder or as part of an applicable addendum or statement of work are reserved by crmOrbit and its licensors.

6.3 Confidential Information. "Confidential Information" means all information disclosed by crmOrbit to CLIENT, before or after the Effective Date, and generally not publicly known. Confidential Information of crmOrbit includes, without limitation, the EO Service, Credentials, materials provided by crmOrbit, and any and all product documentation, whitepapers, product guides, data sheets and training materials. The Agreement, including the terms in the SOW, are Confidential Information. Confidential Information does not include information which CLIENT can document: (i) was in the possession of or known by it without an obligation of confidentiality prior to receipt from crmOrbit, (ii) is or becomes general public knowledge through no fault or acts of CLIENT; (iii) is or becomes lawfully available to CLIENT from a third party without an obligation of confidentiality; or (iv) is independently developed by CLIENT without use of any Confidential Information. CLIENT will only use the Confidential Information to exercise its rights or carry out its obligations under the Agreement and will protect the Confidential Information by using the same degree of care as it uses to safeguard its own confidential or proprietary information of a like nature from unauthorized use, disclosure, or dissemination, but no less than a reasonable degree of care. CLIENT will restrict access to Confidential Information to only its employees or Consultants or affiliated organizations who require such access in the course of their assigned duties and responsibilities and who have been informed of CLIENT's obligations of confidence and have agreed in writing to preserve the confidentiality of such information under terms and conditions no less restrictive than those set forth herein, provided that in the case of CLIENT, CLIENT may not permit a Consultant which is a competitor of crmOrbit to access Confidential Information of crmOrbit without the express written approval of crmOrbit except as otherwise provided for in an executed Statement of Work or Exhibit to this agreement. In the event that any Confidential Information is required to be disclosed pursuant to any law (including the California Public Records Act), code or regulation, if permitted by law, CLIENT will give crmOrbit

immediate notice thereof and will use its commercially reasonable efforts to cooperate with crmOrbit if crmOrbit seeks a protective order with respect thereto.

7. Warranty.

7.1 **Exclusive Warranty.** crmOrbit warrants that the EO Service will perform in all material respects the functions described in the then current product documentation for the EO Service. If the EO Service fails to operate as warranted in this Section 7.1 and CLIENT notifies crmOrbit in writing of the nature of the non-conformance ("Notice"), crmOrbit will make commercially reasonable efforts to promptly repair or replace the nonconforming EO Service without charge. If, after a reasonable opportunity to cure of no less than 45 days, crmOrbit does not remedy the non-conformance, CLIENT may no later than ninety (90) days after giving the Notice terminate the Agreement and receive a refund of the prepaid EO Service fees for the period following the date of Notice.

7.2 **Warranty Disclaimer.** Except for the warranties expressly described in these Terms of Use, crmOrbit makes no other warranties with respect to the EO Service or other services provided by crmOrbit, express, implied or statutory, and disclaims any implied warranties of merchantability, fitness for a particular purpose or any warranty arising from course of dealing, usage or trade practice. crmOrbit does not warrant that the EO Service and the CLIENT Data stored through the use of the EO Services are not susceptible to intrusion, attack or computer virus infection.

8. Limitation of Liability.

Except for damages related to negligent breach of Confidentiality, neither Party's aggregate liability under this Agreement for any claim arising under or relating the Agreement, the EO Application Services or any other services provided by crmOrbit under any theory of liability including contract, strict liability, indemnity, tort (including negligence) or otherwise, will not exceed the fees due to crmOrbit up until the date of termination. In no circumstances will either party be liable for any special, indirect, cost of cover, incidental, exemplary, punitive, or consequential damages, such as, but not limited to, loss of revenues.

CLIENT acknowledges that CLIENT Data will be transmitted outside of the EO Service and SFDC's system and to that extent; neither SFDC nor crmOrbit are responsible for the privacy, security or integrity of the CLIENT Data. The EO Services is subject to any limitations, delays, and other problems with the SFDC Service and those inherent in the use of the Internet and electronic communications. crmOrbit is not responsible for any delays, delivery failures, or other damage resulting from the foregoing.

9. **Term and Termination.** The initial term of the Agreement is the period as specified in Addendum(s) attached to this Agreement. Subject to any applicable volume discounts, the EO Service Fees for any Renewal Term may be annually increased no greater

than 3.5% and shall be invoiced on the same schedule as in effect for the billing period immediately prior to the expiration of the Initial Term. This agreement shall automatically renew with same terms unless terminated by one of the parties. CLIENT shall solicit renewal terms and pricing. Only an executed copy of CLIENT's Purchase Order and mutually agreed endorsed agreements constitute renewal of this agreement. crmOrbit may terminate the Agreement by written notice if CLIENT commits a material breach of the Agreement, which breach is not cured within forty-five (45) days of written notice thereof. In the event of a breach by crmOrbit of its obligations hereunder which breach is not cured within forty five (45) days of written notice thereof, CLIENT may terminate that portion of the Agreement applicable to the EO Service or other service by written notice to crmOrbit. Upon termination of the Agreement or termination of the EO Service or other crmOrbit services, as the case may be, crmOrbit shall immediately cease providing any such EO Service or other services.

9.1 License Cancellation for Change in Business Conditions. Notwithstanding Section 4.3, CLIENT may cancel a License subscription associated with a particular Statement of Work upon 30 days written notice to crmOrbit in the event that:

9.1.1 Client provides written notice that the energyOrbit solution is unable to support regulatory reporting requirements, provides details on what is needed to support changed regulatory reporting requirements, and crmOrbit is unable to make changes to conform to new requirements within 45 days of notice.

9.1.2 License cancellation under this section is subject to the following:

9.1.2.1 All license fees and payment obligations due for the first two (2) years of the contract shall be due and payable according to the terms of the applicable SOW, even if cancellation is prior to this date.

9.1.2.2 Upon License cancellation under this section, Client agrees to pay a one-time penalty equal to 35% of the annual total license and user fees, as well as any fees accrued to date based upon the contract and associated Statements of Work. Effective Cancellation Date will be upon receipt of these fees.

9.1.2.3 Except as noted in Sections 9.1.4.1 and 9.4.1.2 above, upon Effective Cancellation Date, license fees for the Cancelled SOW shall cease to accrue, and future payment obligations for this SOW shall be cancelled.

9.1.2.4 crmOrbit shall be relieved of any obligations for support and maintenance of energyOrbit with respect to cancelled licenses as of the Effective Cancellation Date.

- 9.1.2.5 CLIENT may export data from the energyOrbit solution using standard report features and a weekly full data export feature which is part of the Force.com platform. Once cancellation fees are received, energyOrbit will provide up to 40 hours of assistance to transfer data out of the energyOrbit environment. CLIENT may engage crmOrbit on a time and materials or fixed fee basis to assist with additional data migration to support a system transition through execution of a Statement of Work or Change Order to this Agreement.
- 9.1.2.6 Other than relief of obligations as provided in this section, surviving provisions of this Agreement and non-cancelled Statements of Work shall remain in force.

10. Publicity.

crmOrbit may identify CLIENT as a customer of crmOrbit. Each party may issue a press release announcing the relationship formed by the Agreement, subject to the prior approval of the other party, not to be unreasonably withheld or delayed.

11. Exceptions.

- 11.1 EO Service Exclusions. Notwithstanding anything to the contrary in this Agreement, crmOrbit will have no liability under this Agreement, with respect to: (i) customizations of the SFDC and/or EO Service by CLIENT, its Users or Consultants, (ii) use of the EO Services in violation of this Agreement or other than in accordance with the published user documentation; (iii) failures which are caused by other software or hardware products including the SFDC Services.
- 11.2 SFDC Service Changes. In addition, in the event SFDC (i) alters the SFDC Service in such a way as to materially adversely impact the operation of the EO Service, or (ii) no longer agrees to host the EO Service under the same terms and conditions as are currently in place, then crmOrbit may in its sole discretion restore the operation of the EO Service in a reasonable period of time or cease offering the EO Service. In the latter event, crmOrbit will refund the applicable prepaid EO Service fees for the period following the date the EO Service ceases to be interoperable with the SFDC Service or the EO Service ceases to be hosted by SFDC, as applicable. The remedies set forth in this Section are the sole remedies for a failure to provide the EO Service due to the foregoing reasons, and crmOrbit shall have no other obligation or liability with respect thereto.

12. **Governing Law.** This Agreement shall be governed exclusively by, and construed exclusively in accordance with, the laws of the United States and the State of California, without regard to its conflict of laws provisions.

13. **Miscellaneous.** The Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all previous agreements or

representations, whether oral or written. The Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect. The failure of either party to enforce at any time any of the provisions of this Agreement will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the right of either party to enforce each such provision thereafter. The express waiver by either party of any provision of this Agreement will not constitute a waiver of any future obligation to comply with such provision. The Agreement will be construed and governed in accordance with the laws of the state of California, without reference to the conflict of laws provisions of any jurisdiction. Unless otherwise elected by crmOrbit in writing for a particular instance (which crmOrbit may do at its option), the sole jurisdiction and venue for actions related to the subject matter of this Agreement will be in the County of Placer, California.

14. **Venue.** The state and federal courts located in or covering Placer County in California shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums, whether on the basis of the inconvenient forum doctrine or otherwise.
15. **Arbitration.** Any dispute arising out of or relating to this Agreement other than a dispute requiring urgent relief shall be resolved solely by final and binding arbitration as follows. Unless the parties otherwise agree in writing, the arbitration shall be conducted in Placer County California before a single arbitrator. The arbitrator shall have relevant knowledge and/or experience in Internet-based online services and shall be jointly selected and mutually approved by the parties or, if the parties are unable to agree, shall be appointed by the American Arbitration Association ("AAA"). The arbitration shall be conducted in accordance with the AAA's then current commercial arbitration rules. The parties initially shall share equally the fees and expenses of the arbitration. However, the arbitrator may award the prevailing party (if applicable and as determined by the arbitrator) all such fees and expenses (including without limitation reasonable attorneys' fees) and the arbitrator should award such fees and expenses if he or she determines that the party acted unreasonably or other than in good faith. Any arbitration decision so rendered shall be final and binding, and judgment thereon may be entered in any court of competent jurisdiction.
16. **Notices.** Both parties consent to the jurisdiction of such courts with respect to any such actions and agree that process may be served in the manner provided herein for giving of notices or otherwise as allowed by California law. If any action is brought by either party to the Agreement against the other regarding the subject matter hereof, the substantially prevailing party will be entitled to recover reasonable attorney fees

and reasonable expenses of litigation. Notices under the Agreement shall be in writing, signed and provided to the contact and address indicated in the Agreement provided, that a party may change such contact or address by written notice to the other party. Notice will be considered effective on the earlier of actual receipt or: (a) one (1) day after posting when sent via an express commercial courier; or (b) five (5) days after posting when sent via certified mail, return receipt requested. Notice will be sent to the address for each party set forth on the first page of this Agreement, or at such other address as will be given by either party to the other in writing. Notices to crmOrbit will be addressed to the attention of: CEO. Failure to perform hereunder shall be excused to the extent that performance is rendered impossible by act of war, terrorism, strike, fire, flood, governmental acts or orders or restrictions or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party. This Agreement (including SOWs, and Addendums) may be executed in counterparts which, taken together, shall form one legal instrument. Any executed copy of the Agreement made by reliable means (e.g., photocopy, scan, or facsimile) is considered an original.

END OF EXHIBIT A-1

EXHIBIT B

PERCENTAGE SHARE (PARTICIPATION PERCENTAGES)

Contracting Members are responsible for paying the following share of all invoices provided to NCPA by crmOrbit, under this Agreement:

Organization	Share of Implementation Costs (Percent)	Share of Annual Licensing Costs (Percent)
Contracting Member		
Alameda	21.07	20.53
Biggs	1.05	1.02
Healdsburg	4.22	4.11
Lodi	24.24	23.62
Lompoc	6.50	6.34
Plumas-Sierra	8.63	8.41
Truckee Donner	18.47	18.00

EXHIBIT C

NCPA SUMMARIES OF LIABILITY INSURANCE

See the attached Summaries of the following insurance coverage:

1. Workers' Compensation & Employer's Liability
2. Automobile Liability & Physical Damage
3. Excess Liability
4. Professional Liability

1792562.2



the northern california power agency

Workers Compensation and Employer's Liability Insurance Summary

INSURED Northern California Power Agency

COVERS California Statutory Workers' Compensation & Employer's Liability

TERM July 15, 2011-2012

INSURER Insurance Company of the State of Pennsylvania (Chartis member company)

POLICY NUMBER WC 025889534

**ESTIMATED
ANNUAL
PREMIUM** \$202,420 (includes \$16,105 for TRIA)
\$ 11,197 California Taxes, Assessments Surcharges
\$213,617

Earned premium determined at audit at conclusion of policy term using actual
July 1, 2011-2012 payroll and California rates on file at July 1, 2011.

California taxes, assessments, surcharges subject to audited premium.

LIMITS Statutory for Workers' Compensation

Employer's Liability:

\$1,000,000 Bodily Injury by Accident-Each Accident
\$1,000,000 Bodily Injury by Disease-Policy Limit
\$1,000,000 Bodily Injury by Disease-Each Employee



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Automobile Liability & Physical Damage Insurance Summary

INSURED Northern California Power Agency
Northern California Municipal Power Corporation No. 2 and
Northern California Municipal Power Corporation No. 3

COVERS Automobile Liability & Physical Damage

TERM December 1, 2011 to December 1, 2012
At 12:01 Standard Time

INSURER The Hartford Fire Insurance Company

POLICY NUMBER 57UEN TL0013

LIMITS OR AMOUNTS

Liability per accident	\$1,000,000	
Uninsured Motorists	\$1,000,000	
Underinsured Motorists	Included in Uninsured Motorists	
Auto Medical Payments	\$ 5,000	
Physical Damage – Comprehensive	Not Covered	Owned Autos
Physical Damage – Collision	Not Covered	Owned Autos
Physical Damage – Comprehensive	\$ 25,000	Hired Autos
Physical Damage – Collision	\$ 25,000	Hired Autos
Towing and Labor	Not Covered	
Rental Reimbursement	Not Covered	

Defense Cost: Paid in addition to the limits
Coverage Trigger: Accident
Liability Deductible: Each Accident Nil

Physical Damage Deductibles: Physical Damage – Comprehensive \$1,000
Physical Damage – Collision \$1,000



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Excess Liability Insurance Summary

INSURED Northern California Power Agency
Northern California Municipal Power Corporation No. 2 and
Northern California Municipal Power Corporation No. 3

COVERS Excess Liability
Claims-First-Made Form

TERM December 1, 2011 to December 1, 2012
At 12:01 Standard Time

Retroactive Date: December 1, 1986 at 12:01am Standard Time at the address of
the named insured Claims-First-Made Policy; Community Service Retroactive
Date: December 1, 1998; Pending and Prior Date for EPLI: December 1, 1994

INSURER Associated Electric & Gas Insurance Services, Ltd. (AEGIS), Form 8100(3/2007)
(Non Admitted Insurer)

POLICY NUMBER X05055401P

**LIMITS OR
AMOUNT**

- A. Limit of liability each occurrence:
 - 1. \$35,000,000*
 - 2. \$70,000,000 General Aggregate
- B. Joint Venture Limit of Liability each occurrence:
Per limit of Liability section percentage of insured interest in JV within total
policy limits (not > \$35,000,000)
- C. Combined Products/Completed Operations Liability
Aggregate Limit of Liability: \$35,000,000
- D. Failure to Supply Liability Aggregate Limit of Liability: \$35,000,000
- E. Pollution Liability Aggregate Limit of Liability: \$35,000,000
- F. Incidental Medical Malpractice Injury Limit of Liability each occurrence:
\$35,000,000
- G. Wild Fire Liability Aggregate Limit of Liability for the Policy Period
\$35,000,000

* Subject to the \$70,000,000 General Aggregate of the Policy



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Professional Liability Insurance Summary

INSURED	Northern California Power Agency
COVERS	Professional Liability Insurance Claims-First-Made Form
TERM	March 27, 2011 to March 27, 2012 At 12:01 Standard Time Retroactive Date: December 1, 2002 (Designated Activities) May 24, 2005 (Accountant's Liability) Claims-First-Made Policy
INSURER	Associated Electric & Gas Insurance Services, Ltd. (AEGIS) (Non Admitted Insurer)
POLICY NUMBER	E0352A1A11
LIMITS OR AMOUNT	\$10,000,000
DEDUCTIBLE	\$500,000
PREMIUM	\$66,990